MONTANA LEGISLATIVE HISTORY

Chapter 622 19 82

Bill H 442 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 04	✓ C	Hearing Date(s)	Mar 12	✓ C
	Feb 12	✓ C		Mar 24	✓ C
		C			C
		C			C
Date Out	Feb 13	✓ C		Mar 26	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

The Law Library does not have any Free Conference Committee minutes for this bill.

3/03	HEARING		
3/04	COMMITTEE REPORT--BILL CONCURRED		
3/06	2ND READING CONCURRED	47	0
3/09	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/11	SIGNED BY SPEAKER		
3/12	SIGNED BY PRESIDENT		
3/12	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 123 EFFECTIVE DATE: 10/01/87		

HB 442 INTRODUCED BY MERCER, ET AL.
LIMIT PUNITIVE DAMAGES

1/24	INTRODUCED		
1/24	REFERRED TO JUDICIARY		
2/04	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	63	37
2/17	3RD READING PASSED	65	33
	TRANSMITTED TO SENATE		
2/19	REFERRED TO JUDICIARY		
3/12	HEARING		
3/26	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	50	0
3/30	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING AMENDMENTS NOT CONCURRED	76	12
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	FREE CONFERENCE COMMITTEE REPORT		
4/20	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	88	8
4/21	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	89	10
	SENATE		
4/09	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	FREE CONFERENCE COMMITTEE REPORT		
4/17	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/20	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	47	3
4/22	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 627 EFFECTIVE DATE: 10/01/87		

HB 443 INTRODUCED BY CORNE', ET AL.
REVISING LAWS RELATING TO PRACTICE AND LICENSURE OF PSYCHOLOGY

1/24	INTRODUCED		
1/24	REFERRED TO BUSINESS & LABOR		
2/05	HEARING		
2/10	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/12	2ND READING PASSED AS AMENDED	98	0
2/14	3RD READING PASSED	90	4

HOUSE BILL NO. 442

INTRODUCED BY MERCER, MANUEL

IN THE HOUSE

JANUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 13, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 14, 1987	PRINTING REPORT.
FEBRUARY 16, 1987	SECOND READING, DO PASS.
FEBRUARY 17, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 65; NOES, 33.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 26, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1987	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED TO PLACE BILL ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

	IN THE HOUSE
APRIL 7, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS NOT CONCURRED IN.
	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 9, 1987	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE HOUSE
APRIL 16, 1987	FREE CONFERENCE COMMITTEE REPORTED.
	IN THE SENATE
APRIL 20, 1987	FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE HOUSE
APRIL 20, 1987	SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
APRIL 21, 1987	THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	SENT TO ENROLLING.

INTRODUCED BY House BILL NO. 442
MERCER Manuel

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE DAMAGES IN CONTRACT-RELATED CASES; PROHIBITING INSURANCE COVERAGE OF PUNITIVE DAMAGES; AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. ~~Purpose------factual--basis-for-punitive-or exemplary-damages~~ Punitive damages -- when allowed. ~~The purpose--of--27-1-221--is--to--deter--claims-for-punitive-or exemplary-damages-that-are-not-clearly-based-in-fact,-and-to that-end,-the-legislature-intends-for-27-1-221-to-be-used-in combination-with-early-and-ready-application-and-granting-of motions-for-summary-judgment-pursuant--to--Rule--56--of--the Montana--Rules--of-Civil-Procedure-where-such-claims-are-not based-in-fact,-and-the-application-of-the-sanctions-provided for-in-Rule-11-of--the--Montana--Rules--of--Civil--Procedure against--those--parties--responsible-for-making-such-claims.~~

(1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(a) contract;

(b) breach of contract;

(c) breach of any express or implied covenant included within or arising out of a contract; or

(d) a tort that is interrelated with and dependent upon a claim for breach of contract."

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. ~~When--exemplary~~ Punitive damages ~~allowed~~ -- liability -- proof -- award. (1) Subject to subsection (2), ~~in-any-action-for-a-breach-of-an-obligation-not-arising-from contract~~ and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of ~~oppression,~~ actual fraud, or actual malice, ~~--actual--or presumed,--the--jury,-in-addition-to-the-actual-damages,-may give-damages-for-the-sake-of-example-and-by-way-of-punishing the-defendant.~~

(2) A defendant is guilty of actual malice if he knowingly caused injury to the plaintiff.

(3) A defendant is guilty of actual fraud if he:

INTRODUCED BILL
HB 442

Montana Legislative Council

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only where the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of such reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

~~(2)~~(5) ~~The jury may not award exemplary or punitive damages unless the plaintiff has proved all~~ All elements of the claim for ~~exemplary or~~ punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt.

~~(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, knowledge of which may be proven by direct or circumstantial evidence, which creates a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk or recklessly proceeds in unreasonable disregard of or indifference to that risk.~~

~~(4) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages.~~

~~(5) A defendant is guilty of oppression if he intentionally causes cruel and unjust hardship by:~~

~~(a) misuse or abuse of authority or power; or~~

~~(b) taking advantage of some weakness, disability, or misfortune of another person.~~

~~(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.~~

~~(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than $25,000 or 1% of the defendant's net worth, whichever is greater.~~

~~(7) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in subsection (6)(b).~~

(6) Liability for punitive damages must be determined

by the trier of fact, whether judge or jury.

(7) (a) If the trier of fact returns a verdict or finding of liability for punitive damages, the amount thereof must be determined exclusively by the judge and judgment entered within a reasonable time.

(b) When an award of punitive damages is made, the judge shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances which may operate to reduce, without wholly defeating, punitive damages.

(8) Evidence regarding the defendant's financial

affairs, financial condition, and net worth may not be admissible in a trial to determine whether a defendant is liable for punitive damages, except that evidence of the defendant's net worth must be considered by the judge in determining the amount of punitive damages to be awarded in those cases where liability for such an award has been determined."

NEW SECTION. Section 3. Insurance coverage of punitive damages void. It is a violation of public policy to insure against an award of punitive damages, and any insurance policy provision which purports to insure against any loss from liability for punitive damages is void.

NEW SECTION. Section 4. Codification instruction. Section 3 is intended to be codified as an integral part of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to section 3.

NEW SECTION. Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Applicability. (1) Except as provided in subsection (2), this act applies to any proceeding in which trial is commenced after the effective

date of this act.

(2) Section 3 applies to policies of insurance issued after the effective date of this act.

NEW SECTION. Section 7. Effective date. This act is effective on passage and approval.

-End-

CS-32
1985

STATUS SHEET

HOUSE

~~50th~~ LEGISLATIVE SESSION

JUDICIARY COMMITTEE

OUSE BILL UMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
419		2/5/87	failed to meet deadline								
430		2/18/87	2/18/87	2/18/87							
435		2/2/87	2/6/87			2/6/87					
442	1/2/87	2/4/87	2/12/87			2/12/87					
448		2/13/87	2/18/87	tabled							
460		2/13/87	2/21/87			2/21/87					
468		2/12/87	2/14/87	tabled							
470		2/17/87	2/18/87			2/18/87					
472		1/30/87				2/17/87					
474		2/12/87	2/20/87			2/20/87					
475		2/18/87	2/21/87	tabled							
478		2/9/87	2/21/87			2/21/87					
482		2/13/87	2/20/87			2/20/87					
491		2/13/87	2/20/87	2/20/87							

e a separate sheet for Senate Bills, House Bills, and Resolutions.

D

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 4, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 4, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Daily and Rep. Hannah who were excused.

HOUSE BILL NO. 442: Rep. Mercer, District No. 50, sponsor, stated that this bill attempts to restrict, limit and further define and clarify the areas where punitive damages can be awarded. It also removes the caps on punitive damages that were placed during the last legislative session. Currently the statute reads that you can only get punitive damages for obligations that are not arising from contracts. Rep. Mercer explained that this has been restated clearly in subsection two on line four saying that unless it is provided for by statute expressly somewhere else, you cannot get punitive damages which is in contract actions or anything that is relating to a contract. He stated that this is primarily for the purpose that in a commercial area we are trying to make a breach of contract a remedy. He explained that if someone does not do what they promised to do under a contract, then you sue them for breach of the contract. You do not punish them with punitive damage award. A major step for the bill is found on the bottom of page four, top of page five, where it is stated that in a non-jury case, the judge would determine whether or not there should be punitive damages. The judge will also set the amount of punitive damages. In a criminal case, the jury will determine whether the person is guilty or not. The penalty is not determined by the jury but is determined by the judge. In this situation we are talking about a penalty also, so the judge will make the determination of the appropriate penalty. The judge must also set forth his reasons for making an award. Rep. Mercer stated that he does not agree with the applicability section. He feels these laws should be applicable to causes of action that arise after this bill goes into effect and it is effective upon passage and approval.

PROPONENTS:

RANDY BISHOP, an attorney from Billings, representing the Montana Association of Defense Council of which he is presently the Vice President supported HB 442 because it is

the opinion of the Board of Directors and also a special tort reform committee of the Montana Association of Defense Council, that there has been a rapid expansion in both the number of cases and the types of cases presenting claims for punitive damages as well as rapid expansion in the amount of punitive damage awards. He stated a problem exists and it needs to be addressed legislatively. He felt this bill eliminates recovery for conduct such as oppression, constructive fraud or presumed malice.

JIM ROBISCHON, attorney, representing Montana Liability Coalition, presented an Amendment to this bill. (Exhibit A). He stated HB 442 gives a clear statement of legislative policy on the standard of conduct to which punishment would apply and the type of cases in which damages may be awarded. It also provides for a dispassionate procedure for the imposition of this punishment once the jury has determined the punishment is in fact appropriate. Mr. Robischon cited Dunphy vs. Baskin-Robbins. In 1986, the Montana Supreme Court was split 4-3 on whether or not there was sufficient evidence in the case to support or to submit the issue of punitive damages to the jury. At the conclusion of the case, a motion was made by Baskin-Robbins to strike or dismiss the Dunphy claim of over a million dollars for punitive damages upon the refusal of Baskin-Robbins to agree to or accept the request to relocate the store. In that 4-3 majority the court declared that in connection with the issue of whether or not there was sufficient evidence to support the presentation of the issue to the jury, the court declared a "jury question was raised as to fraud, oppression, and malice on the part of Baskin-Robbins".

Mr. Robischon explained that the amendment he has submitted is for the committee's consideration. He stated it provides in compliance with established governmental standards, whether they are state standards or standards of the U.S.A. It would be applicable to a product, a structure or a service at the time of either the manufacture of the product construction of the structure or the performance of the service. This would be a defense to punitive damages and would apply only to punitive damages.

RALPH YAEGER, with the Department of Commerce and serves on the staff of the Governor's Council of Economic Development, appeared on behalf of Kay Foster who is the Chairwoman of the insurance subcommittee of the Governor's Council. The Council recommends that judges, rather than juries, determine the amount of punitive damage awards. The Council urged the passage of this bill.

JEFF KIRKLAND, Executive Vice President of the Montana Credit Union League, stated the Credit Union League supports

this bill, including all of the 108 members who believe HB 442 strikes an equitable balance between some abuses.

ALAN ECK, Montana Farm Bureau Federation, submitted written testimony in support of HB 442. (Exhibit B).

ROGER YOUNG, President of the Great Falls Chamber of Commerce, submitted written testimony. (Exhibit C). He stated the area Chamber of Commerce supports the passage of HB 442. He felt the judges, not juries, should determine the amount of punitive damages, as they do in criminal cases. He also felt standards must be made clear so Montanans will know when their conduct exposes them to punitive damages and it is time to stop the punitive damages lottery.

LON DALE, attorney from Missoula, stated in the last 22 years the total punitive damages affirmed by the Montana Supreme Court amounts to 4.3 million dollars, and punitive damages are rare. Mr. Dale noted a striking feature of this bill is it would eliminate punitive damages when they arise from contracts. He submitted a letter from a bankruptcy trustee and asked that it be considered as a statement in opposition to HB 442. (Exhibit D). Mr. Dale also explained that jurors are smart and they take their responsibilities very seriously. To leave jurors out of this process would be an extreme disservice for the citizens of this state.

JOHN HOYT, attorney from Great Falls, emphasized this bill does away with punitive damages and punitive damages are a valuable part of our method of aiding society. He stated we need a fair and workable law and this bill is not fair nor is it workable. He stated the majority of the Supreme Court reversals are made because of errors they see in the findings and rulings of the judges and seldom because the jury is wrong. The jury is our greatest institution.

LEO LAFELT, attorney from Billings, stated that as a practical matter, this bill eliminates punitive damages. He hopes the people who sponsor this type of legislation, rather than go through five pages of a bill that is designed to eliminate punitive damages, would just simply ask you to pass a law eliminating the entire factor of damages. The question Mr. Lafelt states we must face is, do we or do we not want exemplary damages. As it exists today in the statutes, there is a remedy, but as proposed by this law, there is none.

BILL ROSSBACH, an attorney who is on the Board of Directors of the Montana Trial Lawyers, reminded the committee that last session many months were spent in debate over this issue of punitive damages and all the work resulted in setting standards for current statutes. He stated the cases

brought up by the proponents of this bill were not tried by the new standards and as a matter of social policy, if we can see these are valuable, why are we changing them. Mr. Rossbach explained that restrictions are being added to anything that has to do with a contract and there are not very many cases that do not, somewhere, involve a contract so any product liability case is going to be subject to this restriction. A fraud case, the oldest type of punitive damages case recognized in this state would even be abolished. This bill makes oppression not subject to responsibility and punitive damages. Mr. Rossbach stated an entirely different system will be set up where there will be judge trials and jury trials. There will be jury trials and then start all over and do an entirely new trial on the question of how much punitive damages there should be, so the total number of court cases will be doubled and double the time the judge will have to be involved in the cases.

REP. TIM WHALEN, introduced a former client of his, Mr. Fred Porich from Billings, who testified in regard to what role punitive damages played in his business. Mr. Porich stated he felt HB 442 had some very dangerous aspects to it. He is a member of the U.S. Chamber of Commerce, Billings Chamber of Commerce and a member of the National Federation of Businesses. Mr. Porich explained in 1976 he entered into a contract with Alavanti of America. This company sold him obsolete machinery that was not serviceable. He terminated the contract with Alavanti and Alavanti filed a law suit against him. Mr. Porich hired Tim Whalen and threatened the company with punitive damages. After a period of two or three years, a settlement was reached and Mr. Porich feels it was because of the threat of punitive damages. He stated the threat of punitive damages works as a balance in our legal system against large international and national corporations. The small business man needs this protection.

DISCUSSION (OR QUESTIONS) ON HOUSE BILL NO. 442: Rep. Addy asked Rep. Mercer if it was his intent with this bill to eliminate punitive damages. Rep. Mercer answered that it was not. Rep. Addy stated there were several famous or near famous punitive damage verdicts in the last few years and he asked Rep. Mercer if he could name any that were not based on breach of contract, contract, breach of an applied covenant or a tort interrelated with and dependant upon a claim for breach of contract. Rep. Mercer stated he was not familiar with those cases but the current law states punitive damages are awarded for a breach of an obligation not arising from a contract. Rep. Addy asked Mr. Bishop the same question and he stated it is intended to take existing law and restore to it the position which was intended when the punitive damage statute was drafted. The trend in Montana in the past seven or eight years has been consistent

with the national trend. The cases finding jury appeal are contract situations.

Rep.Rapp-Svrcek stated we cannot have things both ways and asked Mr. Hoyt why we should allow someone to insure themselves against an intentional harm they might commit. Mr. Hoyt stated it sounds good in concept but in truth and in fact, intentional acts can be committed by people who have no intentions to commit intentional acts such as manslaughter. We should be able to contract to defend ourselves. If we cannot contract with our insurance company to protect us from our worst acts which we do not intend to commit, then we are in real trouble.

Rep. Miles asked Rep. Mercer to clarify page 1 and 2, instances covered by the language, "as otherwise provided by statute". Rep. Mercer stated that subsection two speaks of areas where it is not permitted. He explained punitive damages can only be given where we say they can be given and it must be expressly provided for in statute. He listed a few instances when punitive damages are provided for, namely; bad checks, black listing employees, not paying cigarette taxes and forceful entry or detainer.

Rep. Eudaily asked Rep. Mercer how many other places in the code can it be found that it is a violation of public policy for anyone to protect themselves against any form of liability. Rep. Mercer stated there are other things you may not be able to insure yourself from as a matter of public policy, but he was not an insurance expert.

Rep. Rapp-Svrcek questioned Mr. Hoyt in regard to the definition of oppressive behavior. Mr. Hoyt stated oppressive behavior is difficult to define by definition but can be explained by general terms. He asked Rep. Rapp-Svrcek to look at HB 110 because it covered the definition quite well.

Rep. Mercer closed the hearing on HB 442.

HOUSE BILL NO.110 AND 111, Rep. Thomas, District No. 62, sponsor, stated both bills are being heard at the same time because they do just about the same in they relate to punitive damages and what we would do with them as far as public policy change in the State of Montana. Rep. Thomas pointed out punitive damages are a fine for oppression, fraud and malice. They are meant to punish whomever for doing wrong as we stipulate in the law. Punitive damages are in addition to actual damages and they may be given for the sake of example and by way of punishing the defendant for doing wrong. Any fine is used to police compliance of the law for society in general, they are to benefit society. He proposed in these two bills that punitive damages be

placed by the courts in their proper place. In HB 110 he provided that 90% of a punitive damage be placed in the state general fund and that 10% would go into the uninsured employers fund. HB 111 will put 100% of a punitive damage in the general fund. Rep. Thomas submitted an amendment to HB 110. (Exhibit A). He stated essentially, the fine is put to the benefit of society instead of to benefit just a few people.

PROPONENTS:

HIRAM SHAW, from the Division of Workers Compensation, Department of Labor and Industry, stated that the department supports HB #110. He also pointed out that a new source of funds is critically needed for injured workers.

RALPH YAEGER, Governor's Council of Economic Development and speaking in behalf of Kay Foster, stated the Council recommended 90% of the punitive damages award be put into the state general fund and the remaining 10% be presented to the plaintiff and his attorney. He would like to submit this concept as an amendment of the two bills.

E. GARDNER BROWNLEE, Judge of the District Court, Florence, submitted written testimony. (Exhibit B). He stated he favored the intent of the bills for the following reasons: 1) People are to be compensated for wrongs committed against them; 2) The courts and the law favor and encourage settlement between the parties without the need for court action; 3) When parties cannot agree, the courts are available to assist; 4) Wrongs committed are punished and one method of punishment is to require the payment of money. He stated to award punitive damages to the injured party violates another basic rule of law that says parties should not have the assistance of the court to obtain what we term "unjust enrichment" or compensation in excess of the injury.

PAT MELBY, representing the State Bar of Montana, stated he could not testify on HB 442 because the Association cannot take positions on what it feels are real controversial matters. However, on these two bills he feels once a public policy decision has been made, punitive damages do serve a worthwhile social purpose and they should be assessed against a defendant who is guilty, then there has to be some incentive to the plaintiff and his attorney to pursue that. He questions what worthwhile social purpose can be served by allowing punitives to be accessed in an appropriate circumstance and then eliminating any incentive for anyone to attempt to get those damages accessed. He pointed out that even with the amendments, the State Bar would have to oppose these bills.

LON DALE, attorney from Missoula, opposes both bills. The primary basis for the opposition is the bills are unnecessary. He stated the present federal and state law specifically provides there is taxability for punitive damages in the state of Montana. Any punitive damages awarded by a jury in the state are subject to tax by the state and have to be declared. The state is collecting money for punitive damages right now. The fiscal note states there will be no expense to the state and he disagrees. Litigation involving punitive damages is expensive. All the risk with these expenses are usually with the client and law firm and the state will have to spend a lot of money with these bills that it presently does not have to spend.

RANDY BISHOP, attorney from Billings, spoke on behalf of the Montana Defense Council who has reviewed HB 110 and 111 and expressed their opposition to both bills. These bills tend to create too broad a field in cases where punitives are available and it is aggravated by the proposed amendments.

JOHN HOYT, attorney from Great Falls, stated the first seven sections are good but the last section is horrible and should be disposed of.

LEE OVERFELT, attorney from Billings, stated he is opposed to both bills. He explained in major cases, thousands of dollars are spent in costs and it cost thousands of dollars in putting together the punitive phase of the case. If the state does not reimburse us for our attorney fees, we simply are not going to pursue that part of the case.

BILL ROSSBACH, attorney from Missoula, also with the Board of Directors of the Montana Trial Lawyers, wondered if he is successful in getting a large punitive damage award that goes to the State of Montana, will they name a building after him and his client or will he get some kind of reward. Punitive damage cases are the most complicated and difficult and the hardest fought cases there are. He felt there is a severe constitutional problem with these bills if the State of Montana does not do anything to help the plaintiff but expects to receive 90% of the award.

NO FURTHER OPPONENTS

DISCUSSION (OR QUESTIONS) ON HOUSE BILL NO. 110 AND 111: Rep. Eudaily asked Rep. Thomas about amendment number six, how the 30% would be paid. Rep. Thomas stated the first 30% provides for the lawyer and the plaintiff. Rep. Eudaily noted the language was not properly written. Rep. Meyers stated it seems the bill takes away the award and the amendment gives it back. Rep. Thomas answered yes and no. He stated the amendment does provide some compensation for

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 4, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓	✓	
JOAN MILES (D)	✓		
FRITZ DAILY (D)			✓
TOM HANNAH (R)			✓
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓	✓	
EARL LORY (R)	✓		

CS-30

EXHIBIT A
DATE 2-4-87
HB #442

WITNESS STATEMENT

NAME Tim Robischon BILL NO. 442

ADDRESS Helena, MT DATE

WHOM DO YOU REPRESENT? Montana Liability Coalition

SUPPORT ✓ OPPOSE AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

CS-34

EXHIBIT A
DATE 2-4-87
HB #442

HOUSE BILL NO. 442
INTRODUCED COPY

1. Page 3, Line 18.
Following: "doubt."
Insert: "Absent proof, by clear and convincing evidence, that the defendant intentionally and fraudulently withheld from or misrepresented to the state or federal agency information known to be material and relevant to the harm in question, punitive damages may not be awarded where the product, structure, or services alleged to have caused the claimant's harm complied in material respects, at the time of manufacture, construction, or rendering of the service, with standards, conditions, or specifications established, adopted, or approved by a federal or state statute or by an agency of the federal or state government responsible for the design, formulation, labeling, packaging, performance, or approval of the product, structure, or services."

EXHIBIT 6
DATE 2-4-87

MONTANA FARM BUREAU FEDERATION

P.O. Box 6400
~~502 South 19th~~
Bozeman, Montana 59715
Phone (406) 587-3153 # 442

TESTIMONY BY: Alan Eck

BILL # HB-442 DATE 2/4/87

SUPPORT XXXX OPPOSE _____

Mr. Chairman and members of the committee, for the record my name is Alan Eck. I'm speaking today on behalf of the Montana Farm Bureau. The Farm Bureau has had policy reaffirmed every year for several years that is in line with the ideas in HB-442. We urge a do pass recommendation from this committee. Thank you.

SIGNED: Alan Eck

FARMERS AND RANCHERS UNITED

Exh.

EXHIBIT C
DATE 2-4-87
HB # 442

RECEIVED 2-12-87 > MAIL

GREAT FALLS AREA CHAMBER OF COMMERCE
P.O. BOX 2127
926 CENTRAL AVENUE
GREAT FALLS, MONTANA 59403
(406) 761-4434

February 10, 1987

TO: House Judiciary Committee
Cascade County Legislative Delegation

FROM: Roger W. Young, President

SUBJECT: PUNITIVE DAMAGES

The Great Falls Area Chamber of Commerce supports the passage of HB-442 (Mercer). Standards must be made clear so that Montanans will know when their conduct exposes them to punitive damages. The kinds of cases where these damages are available must be clarified and contract cases should be excluded. Judges, not juries, should determine the amount of punitive damages, as in criminal cases. The jury should determine if a punishment is warranted but judges are better situated to determine an appropriate penalty. This is the judges role in criminal cases and should be followed here where society is similarly trying to deter certain conduct. It's time we stop the punitive damages lottery. HB-442 prohibits punitive damages where the underlying claim is based on a contract and permits such damages in cases of actual fraud or malice. When punitive damages are awarded, a judge, not a jury, determines the amount.

EXHIBIT D
DATE 2-4-87
#442

DONALD MacDONALD IV, P.C. / TRUSTEE IN BANKRUPTCY

United States
Bankruptcy Court
District of Montana

234 East Pine, P.O. Box 7525
Missoula, Montana 59807-7525
(406) 728-8796

February 3, 1987

Lon Dale
Attorney at Law
Milodragovich, Dale and Dye, P.C.
Drawer R
Missoula, Montana 59807

RE: Your File #3594/2
Ronald Ray Haskins Bankruptcy; Case #284-00077

Dear Lon:

On behalf of the creditors of the bankruptcy estate of Ray Haskins, I would like to thank you for the fine job you have done in representing their interests. Because of your work, all creditors will be repaid in full together with interest on their claims.

Had it not been for the possibility of punitive damages in this case, I doubt that any of the creditors could have received payment in full plus interest. I think your knowledge of the law regarding punitive damages and the fact that the insurance company recognized that fact led to an equitable and fair settlement for all concerned.

If limitations are placed on ordinary citizen's rights to recover punitive damages, cases such as this would never occur. The bankruptcy estate and its creditors would never receive their just due and the insurance company could make a mockery of their legal obligations.

Again, my thanks for a job well done. I only hope that you will be able to continue your efforts for bankruptcy trustees and ordinary citizens alike in the future in such cases.

Sincerely,

DONALD MacDONALD IV,
BANKRUPTCY TRUSTEE

DMD/vmm

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. HB-442 DATE 2-4-87

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Alan Eck - Montana Farm Bureau	PO Box 6400 Bozeman, MT	X	
R E. FIFER	1410 KNIGHT HELENA		X
Jeff Kirkland Montana Credit Unions League	2424 Teakwood Lane	✓	
Tim Robischon	Helena, MT	✓	
Lee Overfelt	Billings, MT		X
Kay Foster	Chamber of Commerce Billings	✓	
BILL ROSSBACH	MISSOULA		✓
Fred Porisch	Billings		✓
Rep. Jim Whalen	Billings		✓
Ralph Yaeger	Helena	✓	
Olie Neugebauer	DOT Assn of Def Counsel	✓	
RANDY Bishop	" " " " "	✓	
ROGER McGLENN	INDEPENDENT INS AGENTS ASSOC. OF MT	✓	
John Hoyt	GRT FALLS		✓
Jim Van Hirsdale	Billings	✓	
JAMES M. Mulcahy	Helena		✓
Connie Clark - MT. FORWARD	MILES CITY	X	
Chip Erdmann	MT League of Saving Inst	X	
Chas Wm H. Smith	Mont Land Imps Contractors	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 442 DATE July 4, 1987

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Lon J. Dale	Missoula		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 12, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 12, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 241:

Rep. Mercer moved that HB 241, DO PASS. Rep. Mercer moved the amendments of the subcommittee. He stated that the first thing that the amendments do is clean up the destructive discharge language. In subsection (5) a new definition for fringe benefits was included. The definition of good cause has been expanded in subsection (6) and an additional condition has been added in a wrongful discharge. Chairman Lory questioned page 3 with regard to a wrongful discharge penalty. Rep. Mercer explained that if the employer has to pay three years wages he will not discharge anyone. He stated that the amendment goes back to the historical wording. Rep. Addy pointed out that litigation of damages concept has been in the law for a long time so it is not a new concept. Rep. Daily asked Rep. Addy if that is the maximum that anyone could receive under this bill but if there is a written employment contract or collective bargaining, this bill would not apply. The maximum damages someone can get is three years lost wages less whatever mitigation costs there are. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Rapp-Svrcek moved to amend section 5, on page 3, subsection (2), striking the words "emotional distress". Rep. Hannah disagreed with the amendment. Rep. Mercer stated that the issue of emotional distress was discussed very thoroughly by the subcommittee and if emotional distress is put into the bill there is not much reason for the bill and he opposed the amendment. Rep. Rapp-Svrcek pointed out that an employee has a right to a rightful discharge and by pulling this language out of the bill, it leaves in place a number of new protections for the employer. Question was called and a voice vote was taken. The motion FAILED 6-12. Rep. Daily moved an amendment in section 5, inserting "an amount not to exceed $250,000.00". He pointed out that the main reason for this bill is liability insurance and if insurance companies know that that is

the maximum award then they can adjust their premiums accordingly. Rep. Meyers stated that if we go for a cap then the problem is not solved at all. Rep. Mercer opposed the amendment. Rep. Daily pointed out that this issue pertains to wrongful discharge. Question was called and a voice vote was taken. The motion FAILED 15-3. Rep. Addy moved to amend section 5, including language with regard to damages being capped except where the discharge was wrongful because it was in violation of section 4, subsection (1). Rep. Mercer opposed the amendment stating that public policy speaks to all sectors. Rep. Addy commented that it is best not to throw the clean baby out with the dirty bath water. Rep. Grady stated that it seems this could water down the bill and reminded the committee that what we need is good legislation so he opposed the motion. Rep. Rapp-Svrcek stated that amendment should be adopted so that a loophole can be closed. Question was called. A voice vote was called and the motion FAILED 8-10. Rep. Mercer moved that HB 241, DO PASS as amended. Question was called and a voice vote was taken. The motion CARRIED 14-4, with Reps. Miles, Strizich, Brown and Darko dissenting. HB 241, DO PASS AS Amended.

ACTION ON HOUSE BILL NO. 442:

Rep. Mercer moved DO PASS. He moved the amendments and explained them. Question was called and a voice vote was taken. The motion CARRIED 17-1, with Rep. Addy dissenting. (See Amendments Attached). Rep. Mercer moved that HB 442, DO PASS AS Amended. Question was called and a roll call vote was taken. The motion CARRIED 12-5. (See Roll Call Vote Attached). HB 442, DO PASS AS Amended.

ACTION ON HOUSE BILL NO. 262:

Rep. Mercer moved that HB 262, DO PASS. Discussion on the bill followed. Rep. Addy opposed this bill because the temptation for adults to add or delete details in testimony is very possible since it is such an emotional issue especially when a child has been raped. Rep. Meyers asked how the child would be interviewed and Rep. Mercer stated that the interviewing is done by the judge. Rep. Addy pointed out that the child will not be coming into the courtroom and the judge will rule on hearsay evidence. Rep. Mercer commented that the bill contains safe guards for reliability. Rep. Meyers stated that a guilty verdict must be proven without a reasonable doubt. Rep. Bulger stated that he wants to vote for the bill but is confused if it is really a good bill. Rep. Miles pointed out that the present system is designed for adults and not children. She stated that this bill will protect the children and she is in favor of it. Rep. Eudaily stated that the judge must make a decision

STANDING COMMITTEE REPORT

February 13, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 442

xx ☐ do pass ☐ do not pass ☐ be concurred in ☐ be not concurred in xx ☐ as amended ☐ statement of intent attached

Chairman

1. Title, line 9.
Strike: "AND AN" through "DATE" on line 10

2. Page 2, line 4.
Following: "(2)"
Insert: "(a)"

3. Page 2, lines 7, 8, 9, and 11.
Renumber: (a), (b), (c), and (d) as (i), (ii), (iii), and (iv)

4. Page 2, line 11.
Strike: "a tort" through remainder of lines 11 and 12
Insert: "tortious violation of any express or implied covenant included within or arising out of a contract.
(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201."

5. Page 2, line 23.
Following: "ha"
Insert: ":"
Following: line 23
Insert: "(a)" at the beginning of line 24
Following: "plaintiff" on line 24
Insert: "; or"
Strike: "."

6. Page 2.
Following: line 24
Insert: "(b) has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:
(i) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff, or
(ii) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.
(3) For purposes of subsection (2)(a), a person acts

FIRST WHITE reading copy ( ) color

knowingly if he is aware that it is highly probable that injury will be caused by his conduct"

Renumber: subsequent subsections

7. Page 5.
Following: line 23
Insert: "increase or"

8. Page 6, line 23.
Strike: "(1)" through "to" on line 2 of page 7
Insert: "This act applies to claims arising and"

9. Page 7, line 3.
Following: "act"
Insert: ", except that subsections (7), (8), and (9) of 27-1-221 apply to trials that begin after the effective date of this act whether or not the claim arose after the effective date of this act"

10. Page 7, lines 4 and 5.
Strike: new section 7 in its entirety

ARB442b/JN/JMI

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2-12-87 BILL NO. 442 TIME 10:48

NAME	EXCUSED	AYE	NAY
JOHN MERCER		✓	
LEO GIACOMETTO		✓	
BUDD GOULD		✓	
AL MEYERS		✓	
JOHN COBB		✓	
ED GRADY		✓	
PAUL RAPP-SVRCEK			✓
VERNON KELLER		✓	
RALPH EUDAILY		✓	
TOM BULGER		✓	
JOAN MILES			✓
FRITZ DAILY		✓	
TOM HANNAH		✓	
BILL STRIZICH			✓
PAULA DARKO			✓
KELLY ADDY			✓
DAVE BROWN			
EARL LORY		✓	

TALLY 12 5

Secretary

Earl Lory
Chairman

MOTION: DO PASS AS AMENDED

FURNISHING HUMAN TISSUE A SERVICE AND NOT A SALE

RUN DATE.... 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0393	3/02	3/20		CONCUR AS AMENDED		3/21
LORY, EARL			REVISE PROCEDURE FOR REMOVING HUMAN RIGHTS CASE TO DISTRICT COURT			
HB0396	2/16	3/09		CONCUR		3/11
PAVLOVICH, BOB			SUSPEND DRIVER'S LICENSE FOR UNLAWFUL OR FRAUDULENT USE OF LICENSE			
HB0400	3/02	3/20		CONCUR AS AMENDED		3/27
MANUEL, REX			REQUIRE LEGISLATIVE APPROVAL OF HRC RULES GOVERNING HOUSING DISCRIMINATION			
HB0413	2/11	3/06		CONCUR		3/6
BRANDEWIE, RAY			REMOVE AMOUNT OF MARIJUANA REQUIRED FOR INTENT TO SELL			
HB0430	2/23	3/17		CONCUR		3/17
BRANDEWIE, RAY			CLARIFY DELIBERATE HOMICIDE SENTENCES			
HB0435	2/12	3/06		ADVERSE REPORT		3/13
BRANDEWIE, RAY			REVISE FORFEITURE IN CRIMINAL PROCEEDINGS			
HB0442	2/19	3/12		CONCUR AS AMENDED		3/24
MERCER, JOHN			LIMIT PUNITIVE DAMAGES			
HB0470	2/23	3/18		CONCUR AS AMENDED		3/21
MILES, JOAN			GENERALLY REVISE PROCEDURE OF YOUTH COURT AND LAW REGARDING YOUTH OFFENDER			
HB0474	3/02	3/25		CONCUR AS AMENDED	NO ACT 3/27	4/16
MOORE, JANET			CORPORATE DIRECTORS, OFFICERS PERSONALLY LIABLE FOR EMPLOYEES' UNPAID WAGES			
HB0478	3/02	3/24			NO ACT 3/27	—
THOMAS, FRED			LIMITED IMMUNITY FOR WEED DISTRICTS			
HB0482	3/02	3/26		CONCUR		3/26
SCHYE, TED			ALLOW JUSTICE COURT TO BE DESIGNATED AS A CITY COURT			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 12, 1987

The forty-first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 12, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HB 167: Representative Bob Gilbert of House District #22 presented to the committee HB 167 (see Exhibit 1).

PROPONENTS: Jim Robischon, Montana Liability Coalition, handed out amendments and a page from a record of a damage issue trial (see Exhibit 2 and 3). He felt the House restricted the recovery of mental distress too far. He said the amendments that he purpose describe more throughly what contracts can be covered under this bill (that is (a) through (d)). He explained the hand out from a trial record. He said the case was Noonans vs First Bank of Butte, which had a verdict of 1.5 million dollars. He said it 1986 the district court gave the Noonans $700,000 in mental distress damages. He said the hand out is the one page out of just 11 pages in the record of 1,000 pages that talks about mental distress. He felt the jury went over board in giving that $700,000 verdict for mental distress. He also pointed out the damages would not be covered by any insurance company policy.

Karl Englund, Montana Trial Lawyers Association, said the bill would clarify the damage recovery in a contract dispute case. Mr. Englund explained that the bill is very close to what is stated in section 353 of the Restatement of Contracts Act. Mr. Englund gave the committee an amendment that bring the bill in line with section 353 of the Restatement of Contracts (see Exhibit 4). He hoped the committee would pass the bill the way the House passed it out. He believed the House knew what it was doing when it passed the bill out.

Bob Correna, Bozeman Chamber of Commerce, supported the bill as amended by the Montana Liability Coalition.

Bill Leary, Montana Hospital Association, testified in support of the bill with the amendments.

Connie Clark, Montana Forward Coalition, supported the bill also as amended.

OPPONENTS: John Hoyt of Great Falls said emotional distress can be very

dangerous. He talked about an actual case, Vic Tacke vs Fireman Fund Insurance, where this Mr. Tacke checked himself into the "Pain Center" in Spokane, Washinton for tests of mental distress, which was caused over his suit with the Fireman Fund Insurance. Mr. Hoyt showed graphs of this gentlemen's behavior while at this place. He showed how the mental depression began to worsen with the charts he brought. Mr. Hoyt does not agree with Mr. Robischon's amendment.

William Rossbach, Montana Trial Lawyers Association, gave an example of a family that paid a lot of money for a funeral for their grandmother who had died. He said the family paid cash to the funeral parlor and had a contract with them for the funeral. He explained that when the family left the grave sight that the casket was still not put into the ground. He said they were concern, so they went back to the grave sight and found employees of the funeral parlor throwing rocks at the casket and kicking the casket into the grave site. He said that is mental distress dealing with a contract. He said if that type of claim is being limited in this bill, then the bill is flawed. He stated the parts of cases that Mr. Robischon brought before the committee don't show the whole story that go on in a courtroom.

Zander Blewett, Great Falls attorney, said the bill does attempt to get rid of any emotional distress damage out of fraud cases. He said usually fraud cases arise out of contracts. He said if the committee passes a bill like this, then the committee is accepting the term fraud.

DISCUSSION ON HB 167: Senator Pinsoneault asked about a certain line on Mr. Hoyt's chart. Mr. Hoyt said the line shows how truthful Mr. Tacke was during the sessions and the line is straight, so therefore, he was steady with the truth through out his sessions at the clinque. He explained that Mr. Tacke was a third party member in the case, where there was a breech of contract.

Representative Gilbert closed by saying he supported the Robischon amendments.

CONSIDERATION OF HB 442: Representative John Mercer of Polson introduced HB 442 (see Exhibit 5).

PROPONENTS: Randy Bishop, Montana Defense Counsel, stated right now a judge really has no right, by law, to ask a jury not to try a defendant with punitive damages on top of the liability damage case or other kind of damage case. He gave the committee the Montana State and Federal Court Cases in which punitive damages were awarded (see Exhibit 6).

Jim Robischon, Montana Liability Coalition, supported the bill because the bill sets guidelines for how far punitive damages can go in certain cases.

Connie Clark, Montana Foward Coalition, supported the bill.

Bob Correna, Bozeman Chamber of Commerce, supported the bill.

Lorna Frank, Montana Farm Bureau, supported the bill also.

Jim Rector, representing himself, said punitive damage awards have cost many businesses in Montana a lot of money and many time these kind of case are frivolous cases. He said the definition of "actual malice" is the kind of language that got all of us in this mess to begin with. He said he thinks it would be a good idea to have insurance for punitive damages. He felt business would benefit from having it.

Tuck Vosburg, Pacific Hide and Fur Depot of Great Falls, Montana, supported the bill (see Exhibit 7).

Kay Foster, Govenor's Council of Economic Development and Billings Chamber of Commerce, supported the bill (see Exhibit 8).

OPPONENTS: John Hoyt, Great Falls attorney, said that Karl Englund and himself are working on some amendments for this bill. He pointed out that there has not been one single case tried under the 1985 punitive damage law. He asked how can anyone tell if it will work if it has not been used. He stated there are two provisions in the bill that he is against; first, to require a judge to award damages in a punitive damage case, after a jury has determined that a person is entitled to them. He said this will put a terrible stress on trial judges. He stated that if the bill stated that the judge had to set the amount of the punitive damages award after the jury says there will be one, then it would make a great difference as to what kind of judge one would go before with these kinds of cases. He purposed a system of review for the judge so he can review what the jury has decided on in the amount of the damaged and then the judge can higher it or lower it. He also did not want to see punitive damages insurance in this bill because he thought the insurance companies just don't want to compete for it.

Richard Sebull, Billings Montana, believed juries should decided liability responsibilites and the amount of the damages. He felt people should have the right to buy punitive damages insurance because it would not violate any public policy.

Lon Dale, representing himself, felt the bill takes rights away from the people and that is not tort reform. He felt the 1985 bill was fair and workable. He gave the committee a summary of cases of punitive damage cases from 1965 to the present (see Exhibit 9).

Karl Englund, Montana Trial Lawyers Association, felt the legislature should let the 1985 law go into progress a little longer than just two

years, especially with no one using the law as of yet. He said he doesn't understand why the proponents have a problem with "oppression". He said that definition was worked on two years ago and was thought out very carefully. He said that the act of oppression should be put back into the bill. He felt people should be able to buy punitive damage insurance. He said by tomarrow he will have his amendments written for the committee to look at.

William Rossbach, Montana Trial Lawyers Association, supported the bill because groups like the farmers in these hard economic times are being pressured by banks and other institution and that punitive damages are very practical for farmers.

Zander Blewett, Great Falls attorney, supported the bill.

DISCUSSION ON HB 442: Senator Blaylock asked why this bill has been brought forward when the 1985 law has not even been used yet. Representative Mercer said the last bill would not have gone into effect in time to help any cases. He said the 1985 bill was not that well thought out as Mr. Englund thought it was.

Senator Mazurek asked why this state could never have punitive damage insurance. Representative Mercer said, as an example, everyone would like to have insurance for a DUI, so they will not have to spend time in jail. He said this damage should not be paid by the insurance company, because they did not spread the risk. Senator Mazurek said not everyone would purchase the insurance, and I don't think we should deprive some people from having it if they want it. Representative Mercer gave an example about Ford Motor Company and how they were critized for allowing the Pintos to explosed because of a financial decision the company made.

Senator Yellowtail questioned what the business community thought about this idea of punitive damage insurance. Mr. Vosburg said the businesses that he has talked to would like to have it.

Senator Pinsoneault asked if his bill that he submitted to the committee about the judge having the right to increase or decrease an award as he sees fit, bothers anyone. let the 1985 law go into process a little longer than just two years and with no one using the law as of yet. He said that page 2, lines 11 through 14 the bill goes much futher than contract cases, it includes tort cases. Mr. Hoyt said that happens in every trial anyway. Senator Pinsoneault asked about giving the jury both plaintiff's and defendant's amounts. Mr. Hoyt said he did not know if that was a very good idea. Senator Pinsoneault questioned what was wrong with the jury knowing what figure the plaintiff wants and what figure the defendant is willing to pay. Mr. Hoyt answered that lawyers file a statement of claim before the trial, which is about the same thing.

Representative Mercer closed by saying that this bill will not create "judge shopping" because a lawyer has much more to do in a case then seek out the right judge that will give just the right claim. He stated that in contract cases if someone doesn't keep their promise in a contract, then the other side has a right to collect damages for not keeping that promise. He said the contract law is not to punish someone for not keeping their promise, but just to provide compensation for what they promised in a contract. Representative Mercer said that the other day the House Appropriations Committee took out the whole funding for Dillon's college. He said that would cause cruel and unjust hardship on the people of Dillon, which is what "oppression" is. He said the money was put back into the General Fund, but the point is that oppression is very broad and can be used in many different ways.

The committee adjourned at 12:10 p.m.

Chairman

ROLL CALL

Judiciary COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date March 12

NAME	PRESENT	ABSENT	EXCUSED
Sen. Manuel	X		
Sen. Crippen	X		
Sen. Beck	X		
Sen Blaylock	X		
Sen. Bishop	X		
Sen. Brown	X		
Sen. Halligan	X		
Sen. Galt	X		
Sen. Pinsoneault	X		
Sen. Yellowtail	X		

Each day attach to minutes.

DATE March 12

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible]	Self	442		✓
Roger McGlenn	Independent Insurance Agents Assoc. of MT	442	✓	
Connie Clarke	MT. Forward Coalition	442	✓	
Bob Cowen	Boz Chamber of Comm.	HB 167 HB 442	✓	
Bill Leary	MONT. Hosp. Assn	HB 167 HB 442	✓	
Joyce Cike	Joplin-Miles City	447	✓	
Clay Pelton	First Interstate Bank	442	✓	
Jim Burton	Jones Inc.	442	✓	
Linda Vaughn	Business Owner	442	✓	
Kay Foster	Gov. Council of Ec. Development & Bldg Assn	442	✓	
Lorna Frank	MT. Farm Bureau	442	X	
HS Hansen	MT. Technics Council	HB-167 HB-442	X	
Bill Rossbach	MT Trial Lawyers	167 442		✓ ✓
Tom Allen	Nat. Wood Products Assn	HB 442	✓	
George Allen	Mt. Retail Assoc	HB 167 HB 447	✓	
M.E. Vosburg	Pacific Hide & Fur Depot	HB 167 HB 442	✓	
Randy Bishop	MT Assoc. of Defense Counsel	HB442		
Connie Clarke	MT Forward Coalition	167	✓	
Jim Reiter	Self	442	✓	
Jim Robinson	MT. Assoc. Liability Coalition	HB442-HB167	✓	
Gordon Blewett	Self	HB 442 HB 167		✓
Richard Bibeau	Self	HB442		✓ part
Rose Skoog	MT. Health Care Assn	HB442	✓	
Rose Skoog	MT Health Care Assn	HB167	✓	

(Please leave prepared statement with Secretary)

SENATE JUDICIARY
EXHIBIT NO. 5
DATE March 12, 198
BILL NO HB 442

SUMMARY OF HB442 (MERCER)
(Prepared by Senate Judiciary Committee staff)

HB442 was submitteed in substantially the same form to the Joint Interim Subcommittee on Liability Issuses which did not adopt the bill as a committee bill. This bill revises the law relating to punitive damages. The bill prohibits recovery of punitive damages in any contract case or case arising from breach of an express or implied covenant, except a products liability case or an insurance bad faith case. Allows recovery only cases of actual fraud or actual malice, not presumed fraud or malice as is the law now. The trier of fact, judge or jury, determines liability for punitive damages, but only the judge gets to set the amount of punitive damages. Prohibits insurance coverage of punitive damages.

COMMENTS: None.

C:\LANE\WP\SUMHB442.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE March 12, 198
BILL NO. HB 442

APPENDIX B

Montana State And Federal Court Cases In Which Punitive Damages Were Awarded

1. **Silver Bow County Cases.**

a. Dunfee v. Baskin and Robbins, Silver Bow County, 83 C-258 (1983).

The jury found that the defendant breached the implied covenant of good faith and fair dealing by failing to assist the plaintiffs in relocating a Baskin and Robbins franchise. The jury awarded the following damages:

1. $232,138.88 compensatory damages
2. $300,000 punitive damages

b. Flannigan v. Prudential Federal Savings & Loan Association and Fred Ogolin, Silver Bow County, 83 C-174 (1983).

The jury found that the defendant breached the implied covenant of good faith and fair dealing in a wrongful discharge action in which the defendant fired a 60-year-old employee who had been with the company for 28 years. The jury awarded the following damages:

1. $94,170 in financial damages (lost wages and benefits)
2. $100,000 in general damages and mental stress
3. $1,300,000 punitive damages

c. Dinsmore v. First Metals Bank & Trust Company, Silver Bow County, 81 C-67 (1983).

The jury found that the defendant Bank acted in bad faith in a commercial transaction whereby the bank reduced the plaintiff's floor plan limits in an alleged attempt to force him out of business. The jury awarded the plaintiff damages as follows:

1. $3,000,000 compensatory damages

2. $5,000,000 punitive damages

2. Missoula County.

a. Stowe v. Farmers Insurance Group, Missoula County, 572-37 (1985).

The jury found that the defendant committed bad faith in defending a first-party claim on the basis of arson. The jury awarded the following damages:

1. $72,728.01 compensatory damages

2. $2,000 living expenses

3. $100,000 punitive damages

b. Eliason v. Wallace, ___ Mont. ___, ___ P.2d ___, 41 St.Rep. 758 (1984).

The jury found the defendant liable for punitive damages when he made a left turn in front of the plaintiff. The jury awarded the following damages:

1. $2,963 in actual damages

2. $1,500 punitive damages (approximately)

c. Campbell v. Viking Sewing Machine, Missoula County, CV 83-214-M (1983).

The jury found bad faith on the part of the defendant in a contract action. The following damages were awarded:

1. $62,500 compensatory damages

2. $3,125 punitive damages

3. Lake County.

a. Britton v. Farmers Insurance Group, Lake County, DV 82-140 (1982).

The jury found bad faith where the insurance company defended an insurance benefit claim on the grounds of arson. The following damages were awarded:

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1. $267,000 compensatory damages

2. $400,000 punitive damages

4. Flathead County.

a. Gibson v. Western Fire Exchange, Flathead County, DV 80-341 and Supreme Court affirmed in 41 St.Rep. 1048 (1984).

This was a first-party bad faith claim wherein an insurance company did not settle within the limits, and the judgment was for way over the limit amount. The damages awarded by the jury were as follows:

1. $250,000 compensatory damages

2. $300,000 punitive damages

b. Allers v. Willis, ___ Mont. ___, 643 P.2d 592, 39 St.Rep. 745 (1982).

This was an action for damages arising from a collision between a car and a truck. The jury awarded the following damages:

1. $128,000 actual damages

2. $15,000 punitive damages

c. Lipinski v. Title Insurance Company, ___ Mont. ___, 655 P.2d 970 (1982).

The plaintiff brought suit for failure of the title insurance company to disclose easements and to defend two suits against the plaintiff. The Supreme Court affirmed the judgment against the Title Insurance Company on the first claim. The damages awarded were as follows:

1. $25,000 actual damages

2. $15,000 punitive damages

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In this case, the trial court had found the above damages on two suits; however, the Montana Supreme Court held that the defendant was liable only on the first suit. Therefore, the Montana Supreme Court held that the award must be decreased by that amount given on the second suit.

5. Gallatin County.

a. First Security Bank of Bozeman v. Goddard, 181 Mont. 407, 593 P.2d 1040 (1979).

Insurer denied insured's claim for credit disability insurance on the basis of insurer's erroneous belief that the policy had not become effective as of the date that the insured sustained the disabling disease. This breached the duty of good faith and fair dealing, and the court, sitting without a jury, awarded the following damages which were affirmed on appeal:

1. $4,227.95 disability benefit damages
2. $5,000 exemplary damages

b. Gates v. Life of Montana Insurance Company, Gallatin County, 638 P.2d 1063 (1982), after remand, 40 St.Rep. 1287 (1983).

The plaintiff found the defendant liable for breach of the covenant of good faith and fair dealing implicit in the at-will employment context in wrongfully discharging an employee without the proper procedure. The jury awarded damages as follows:

1. $1,891 compensatory damages
2. $50,000 punitive damages

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c. Crenshaw v. Bozeman Deaconess Hospital, ___ Mont. ___, ___ P.2d ___, 41 St.Rep. 2251 (1984).

The plaintiff respiratory therapist recovered a judgment against a hospital which terminated her employment for alleged behavior inconsistent with hospital guidelines during her probationary employment period. The jury awarded her damages as follows:

1. $125,000 compensatory damages
2. $25,000 punitive damages

The damage awards were affirmed on appeal.

d. Knaub v. Big Sky, Gallatin County, DV 83-156 (1984).

The plaintiff was wrongfully discharged, and the jury awarded damages as follows:

1. $35,000 compensatory damages
2. $250,000 exemplary damages

e. Harris v. American General Life Ins. Co. of Delaware, ___ Mont. ___, 658 P.2d 1089, 40 St.Rep. 164 (1983).

This case involved an insurance company's alleged bad faith in denying a claim under an accidental death policy. The jury returned a verdict as follows:

1. Denied accidental death benefits
2. $30,000 punitive damages

The Supreme Court affirmed the judgment.

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f. Shahrokhfar v. State Farm Mut. Auto. Ins., ____ Mont. ____, 634 P.2d [illegible] (1981).

Plaintiff sued insurance company who mistakenly sued plaintiff for proper damage arising out of an automobile accident. The jury awarded:

1. $850 actual damages

2. $80,000 punitive damages

The District Judge reduced the entire damage award by 16 percent becau of contributory negligence. The Supreme Court found the punitive damages could not reduced by the percentage of plaintiff's contributory negligence.

6. Fergus County.

a. Butcher v. Petranek, 181 Mont. 358, 593 P.2d 743, 36 St.Rep. 830 (1979).

This involved a trespass action, and the jury awarded the following damage:

1. $925 actual damages

2. $20,000 punitive damages

This damage award was affirmed on appeal.

7. Cascade County.

a. Martinson v. B N, Cascade County, Judge McCarvel.

This was a contract situation in which the plaintiff alleged defenda breached an implied contract by discontinuing plaintiff's supply after one year. T plaintiff had a contract with the B N for only this one year. The court found in favor the plaintiff and awarded damages as follows:

1. $1.44 million compensatory damages

2. $1.5 million punitive damages

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b. Tynes v. Bankers Life, Cascade County, ADV-81-1264 (March 11, 1985).

This was a first-party claim for medical benefits and bad faith. The jury awarded damages as follows:

1. Medical expenses $49,167.09
2. $100,000 emotional distress damages for one party
3. $100,000 emotional distress damages for the other party
4. $200,000 punitive damages

c. Baiz v. Checkrite Service Company, etc., Cascade County (10-15-80).

This involved a defendant sending bills for collection and threatening letters where the plaintiff was not, as of yet, in default. The jury awarded damages as follows:

1. Against Check-Rite: $5,000 compensatory and $25,000 punitive.
2. Against Credit Service: $5,000 compensatory and $15,000 punitive.

d. Fitzgerald v. Western Fire Insurance Company, ___ Mont. ___, ___ P.2d ___, 41 St.Rep. 654 (1984).

Jury verdict against defendant as a result of an automobile accident. Defendant was drunk at the time of the accident and traveling at an extremely high rate of speed. The jury awarded damages as follows:

1. General and special damages.
2. $5,000 punitive damages

e. Weber v. Blue Cross of Montana, ___ Mont. ___, 643 P.2d 198, 39 St.Rep. 245 (1982).

This was an action for damages for contract benefits and wrongful cancellation of a medical plan contract. The jury awarded damages as follows:

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1. $157,137 compensatory damages

2. $999,999 punitive damages

This award was affirmed in part and reversed in part. A new trial w necessitated.

f. Harrington v. Holiday Rambler Corp., 176 Mont. 37, 575 P.2d 578 (1977).

Trailer buyers sued manufacturer for damages resulting from defects in trailer. The manufacturer had misrepresented the type and quality of the trailer. Tl jury awarded damages as follows:

1. $17,691.90 general damages

2. $20,000.00 punitive damages

The Supreme Court affirmed the judgment as modified (general damage were reduced).

g. Toeckes v. Baker, ___ Mont. ___, 611 P.2d 609 (1980).

Plaintiff brought suit for deprivation of use of the property throug intimidation. District Court entered judgment against defendant and awarded th following damages:

1. $230 actual damages

2. $1,000 punitive damages

h. Welsh v. Pritchard, 125 Mont. 517, 241 P.2d 816 (1952).

Plaintiff brought action against a landlord for invasion of right of privacy, trespass, and wrongful entry. The jury found for plaintiff and awarded the following damages:

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1. No actual damages

2. $250 exemplary damages

8. Federal Court in Great Falls.

a. Marshall v. B N, CV 79-38-GF (March 6, 1981).

This was a crossing accident in Cut Bank. The jury awarded the following damages:

1. $75,000 compensatory damages

2. $725,000 exemplary damages

This case was taken to the Ninth Circuit, and they reversed and remanded it on the basis of signals that the train was to have.

b. International Harvester v. Weaver Maxwell, CV 83-32-GF; and Weaver Maxwell v. International Harvester, CV 82-41-GF.

This action arose because of an alleged bad faith canceling of a distributorship. The two cases were tried together, and the following jury verdicts resulted:

1. CV 83-32-GF: Plaintiff International Harvester not entitled to recover. Defendant recovered one million dollars on its counterclaim.

2. CV 82-41-GF: Plaintiff not entitled to recover. International Harvester recovered $40,000 on its counterclaim.

9. Dawson County.

a. Brenner and Gehnert v. Cullinan, the Brenner action was 9797-A; the Gehnert action was 9753-A (1982).

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This involved an altercation whereby the parties were fighting over possession of property. The verdicts were as follows:

1. In 9797-A: $199.80 actual damages; $10,000 punitive damages.

2. In 9753-A: $414.52 actual damages; $10,000 punitive damages.

This judgment was appealed, and the Supreme Court remanded the case for a new trial on the amount of damages. There was a question over whether or not pain and suffering should be included within the actuals.

10. Roosevelt County.

a. Johnson v. Murray, ___ Mont. ___, 656 P.2d 170 (1982).

This involved an action against a police officer for damages regarding a speeding ticket, for intimidation, and other charges. A default judgment was entered against the defendant as follows:

1. $100,000 general damages

2. $100,000 punitive damages

3. $1,500 attorney's fees.

The judgment was affirmed.

11. Yellowstone County.

a. Doll v. Major Muffler Centers, Inc., ___ Mont. ___, ___ P.2d ___, 41 St.Rep. 429 (1984).

This was an action to recover damages on a lease for equipment alleging violation of the Montana Unfair Trade Practices and Consumer Protection Act. The jury awarded for the plaintiff and awarded damages as follows:

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1. $30,000 actual damages against Major Muffler

2. $90,000 punitive damages against Major Muffler

3. $10,000 actual damages against Colonial Pacific

4. $40,000 punitive damages against Colonial Pacific

This judgment was appealed, and the Supreme Court reversed as to Major Muffler and modified as to Colonial Pacific.

b. Linda M. Hart-Anderson v. Geraldine C. Hauck and State Farm Insurance Company, DV 83-1404 (tried 1984).

This case involved a bad faith refusal to pay policy benefits. The damages awarded by the verdict were as follows:

1. $687 actual damages

2. $25,000 emotional distress damages

3. $687,000 punitive damages

c. Safeco v. George Ellinghouse, DV 82-1695 (December 20, 1984).

This involved a declaratory judgment action filed by Safeco to determine its liability under a business protection plan policy. The defendant counterclaimed in the declaratory judgment action alleging violation of the covenant of good faith and fair dealing, among other things. The jury found Safeco liable and awarded damages as follows:

1. $25,000 economic damages

2. $200,000 emotional damages

3. $5,000,000 punitive damages

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12. Park County.

a. Purcell and Gary v. Automatic Gas Distributors, Inc., ___ Mont. ___, ____ P.2d ___, 40 St.Rep. 1997 (1983).

This involved a breach of contract in the sale of gas from wholesalers to retailers, wherein a commission was withheld from the retailers without their knowledge. The jury awarded:

1. Gary: $7,091.50 general damages
   $50,000.00 punitive damages
2. Purcell: $6,107.50 general damages
   $50,000.00 punitive damages

The Supreme Court affirmed as to Automatic Gas.

13. Big Horn County.

a. Kildahl and Holland v. Fox Oil Co. of Hardin, Big Horn County, No. 9[illegible] (1983).

This involved the breach of a lease on a service station. The jury awarded damages as follows:

1. $39,900 compensatory damages
2. $10,000 punitive damages

The District Court judge reduced the compensatory award to $16,000 but retained the punitive damages.

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b. Lauman v. Lee, ___ Mont. ___, 626 P.2d 830 (1981).

Action by motorist against an owner and operator of another car involved in a collision to recover damages. There was evidence that the defendant had destroyed critical physical evidence. The jury found no negligence or compensatory damages but did award $17,500 punitive damages, plus costs.

The Supreme Court affirmed this award, holding that the failure of the jury to fix a monetary value of plaintiff's damages caused by the destruction of evidence did not preclude an award of punitive damages.

14. Musselshell County.

a. Miller v. Watkins, ___ Mont. ___, 653 P.2d 126 (1982).

Breach of contract action for breeding horses. Jury verdict for defendant on his counterclaim, with the following damages:

1. $78,000 actual damages (less $1,500 for plaintiff)

2. $50,000 punitive damages

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SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 12, 1987
BILL NO. HB 442

TESTIMONY FOR HB 442 MARCH 12, 1987
SENATE JUDICIARY COMMITTEE

MR. CHAIRMAN, MEMBERS OF THE JUDICIARY COMMITTEE, MY NAME IS TUCK VOSBURG, PRESIDENT OF PACIFIC HIDE & FUR DEPOT FROM GREAT FALLS, MONTANA.

PACIFIC IS A MONTANA CORPORATION DOING BUSINESS HERE SINCE ABOUT 1919. WE ARE INVOLVED IN HIDES, FURS, METALS RECYCLING AND THE SALE OF STEEL AND FARM PRODUCTS THROUGH A SYSTEM OF LOCAL BRANCHES. OUR COMPANY EMPLOYS 400 PEOPLE WITH NEARLY ALL OF OUR STOCK HELD BY MONTANA RESIDENTS.

MY PURPOSE IS TO PROVIDE YOU WITH A BRIEF VIEW OF WHAT HAPPENS WITHIN A COMPANY WHEN IT IS SUED FOR A LARGE PUNITIVE DAMAGE CLAIM. OUR COMPANY WAS SUED AND WENT TO TRIAL IN TWO CASES WHERE SUBSTANTIAL PUNITIVE DAMAGES WERE REQUESTED.

WHEN WE ARE SUED WE SEND THE COMPLAINT TO OUR INSURANCE COMPANY. WITHIN DAYS WE RECEIVE A LETTER FROM THE INSURANCE COMPANY ACCEPTING LIMITED COVERAGE BUT STATING, AND I QUOTE FROM THEIR LETTER, "THE POLICY OF INSURANCE DOES NOT INDEMNIFY OR COVER EXEMPLARY DAMAGES. SHOULD THE PLAINTIFF REALIZE AN AWARD FOR EXEMPLARY AND/OR PUNITIVE DAMAGES, YOU WOULD BE RESPONSIBLE FOR SATISFACTION OF SAME." IN MONTANA THIS DENIAL OF COVERAGE IS A COMMON OCCURANCE BECAUSE INSURANCE COMPANIES HAVE ALREADY EXPRESSLY EXCLUDED COVERAGES FOR PUNITIVE DAMAGES IN THEIR GENERAL LIABILITY POLICIES.

NEXT, DISCOVERY BEGINS WITH ATTORNEYS FEES CLICKING OFF AND MANAGEMENT TIME MOUNTS. EMPLOYEES WONDER ABOUT THE EFFECT ON THE COMPANY AND THE SUBSEQUENT EFFECT ON THEIR OWN JOBS. WILL THE COMPANY HAVE TO CUTBACK TO PAY THE PUNITIVE DAMAGE AWARDS? WILL THESE CUTBACKS INCLUDE JOBS?

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WITH ALL THESE PRESSURES BUILDING, SETTLEMENT BECOMES A STRONGER ALTERNATIVE EVEN THOUGH THE COMPANY FEELS IT DID NO WRONG AND WILL WIN THE SUIT. REMEMBER, WITH NO PUNITIVE DAMAGE COVERAGE, THE INSURANCE COMPANY IS NOT WILLING TO PARTICIPATE TO ANY GREAT EXTENT IN SETTLEMENT AMOUNTS.

THEN WE GO TO TRIAL. ATTORNEYS' FEES RANGE FROM $50,000 TO $100,000, USUALLY CLOSER TO THE LATTER BECAUSE THE POSSIBILITY OF LARGE PUNITIVE DAMAGES EXTENDS THE CASE FAR BEYOND THE SCOPE THE ISSUES DEMAND. ONE OF OUR TRIALS TOOK FOUR WEEKS TO COMPLETE.

IF WE WIN THERE IS SOME REJOICING AND A GREAT SENSE OF RELIEF.

IF WE LOSE, PUNITIVE DAMAGE AWARDS COULD REQUIRE THE COMPANY TO CONVERT ASSETS TO CASH TO PAY THE AWARD. THAT MEANS LOWERING INVENTORIES AND ACCOUNTS RECEIVABLE OR SELLING EQUIPMENT, BUILDINGS, AND LAND. CASH IS RARELY AVAILABLE IN THESE SUMS. THE NEXT STEP FOR THE COMPANY WOULD BE TO CONTRACT BECAUSE ITS ASSETS HAVE BEEN REDUCED. THAT CONTRACTIONRESULTS IN CUTTING OUT JOBS.

AND WHY WOULD THIS HAPPEN? BECAUSE THE PUNITIVE DAMAGE LEGISLATION IN THIS STATE HAS NO DIRECT RELATIONSHIP WITH ACTUAL DAMAGES A JURY DETERMINES. THE JURY, OFTEN COMPRISED OF PEOPLE WITH NO BUSINESS EXPERIENCE, CAN AFFECT THE HEALTH OF A COMPANY WITH THE STROKE OF A PEN. LARGE PUNITIVE DAMAGE AWARDS AGAINST A COMPANY AFFECT THE PEOPLE IN THAT COMPANY AND THEIR JOBS. PEOPLE WHO HAD NOTHING TO DO WITH THE ISSUE IN THE FIRST PLACE. THIS IS WRONG, IT SHOULD BE CORRECTED.

~~I ASK YOU TO PASS HB 442~~.

But since issues meriting punitive damages under HB 442 can be caused by a single employee acting on his own, the company and the rest of its employees should be able to protect themselves from large punitive damage awards. Therefore, Section 3 prohibiting insurance for punitive damages should be deleted.

I ask you to pass H.B. 442 without Section 3.

Mr. Vosburg, Pres.
N. Dakota Fur Depot

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SENATE JUDICIARY
EXHIBIT NO. 8
DATE March 12, 1987
BILL NO. HB 442

Billings
Chamber of Commerce

March 12, 1987

TESTIMONY IN SUPPORT OF HB442

My name is Kay Foster. I appear on behalf of the Billings Area Chamber of Commerce and the Governor's Council on Economic Development.

For nine months I served as chairman of the Insurance Subcommittee of the Governor's Council on Economic Development. Our subcommittee was assigned the specific task of seeking legislative and administrative solutions to the problem of the lack of available and affordable liability insurance for Montana businesses and governmental entities. Six legislative recommendations were approved by the entire Council and one of these is contained in HB442.

The Council recommended that uncertainties associated with the punitive damage issue must be removed to create a more stable environment for both the insurance industry and the business community. They further recommended that "In regard to punitive damages, judges would instruct juries before its deliberations that they are to determine only if the payment of punitive damages is in order, and that upon reaching a verdict, the judge will determine the amount of the award if the jury has decided for the plaintiff." We feel that Representative Mercer's bill accomplishes this objective and we urge its support.

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EXHIBIT NO. 9
DATE March 12, 198
BILL NO. HB 442

EXEMPLARY (PUNITIVE) DAMAGES MONTANA SUPREME COURT 1965 TO DATE

CASE	DEFENDANT ENTITY	COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY SUPREME COURT
Crystal Springs Trout Co. et al. v. First State Bank of Froid & Jerry B. Wallander (1987)	Bank & Bank President	$461,848	$159,907	Affirmed-$159,907
Kelly W. Tynes & Walter E. Tynes v. Banker's Life Co. (1986)	Life Insurance Co.	$258,752	$200,000	Affirmed-$200,000
Northwestern Nat'l Bank of Great Falls v. Weaver-Maxwell, Inc. (1986)	Bank v. Farm Equipment Dealership	$2,519,671 to Defendant against Bank	$140,000 to Defendant against Bank	Reversed $0
Safeco Insurance Co. v. George Ellinghouse (1986)	Insurance Co. & Individual	$325,000 against Ins. Co.	$5,000,000 against Ins. Co. on counterclaim	Remanded for New Trial or Damage Reduction to Total $1,000,000; which is $675,000 punitive damages
James P. Roberts v. Mission Valley Concrete Industries, Inc. (1986)	A concrete construction plant	approx. $20,000	$5,000	Affirmed-$5,000
Mildred Flanigan v. Prudential Federal Savings & Loan Assoc. & Fred Ogolin (1986)	Savings & Loan Assoc.	$194,170	$1,300,000	Affirmed-$1,300,000
Richard A. Shors & Ann C. Shors v. Jerry L. Branch, et al. (1986)	Consulting Geologist	$17,000	$35,000	Affirmed-$35,000

CASE	DEFENDANT ENTITY	COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLA DAMAGE ASSESSED E SUPREME COURT
Terrence Dunfee & Patricia Dunfee v. Baskins Robbins, Inc. (1986)	Ice Cream Franchise	$232,138.88	$300,000	Affirmed $300,000
Bill Britton v. Farmers Insurance Group (Truck Ins. Exchange) (1986)	Ins. Co.	$214,748.54	$400,000	Affirmed-$400,000
William F. Rauch, Jr. v. Violet Michel (1986)	Individual	$9,297	$5,000	Affirmed-$5,000
Alan D. Nicholson v. United Pacific Ins. Co. (1985)	Insurance Co.	$286,105	$225,000	Affirmed-$225,000
Morrell Tribby v. Northwestern Bank of Great Falls (1985)	Bank	$119,890	$1,000,000	Remanded-$0
John Forsythe & Beth Tinney v. Dan Elkins et al. (1985)	Individual	Remanded	$1,000	Affirmed-$1,000
George Smith & Wm. Smith v. Larry W. Moran et al. (1985)	Individuals	$22,000	$20,000	Reversed $0
Crenshaw v. Bozeman Deaconess Hospital, Edwin E. Dalhberg (1984)	Hospital	$125,000	$25,000	Affirmed-$25,000
Castillo v. Franks (1984)	Individual (rancher)		$5,000	Affirmed-$5,000
Gehnert v. Cullinan (1984)	Individuals (2)	$614.32	$10,000 for each of 4 Deendants	Affirmed total of $40,000 remanded other grounds

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-12-87
BILL NO. H.B. 44

CASE	DEFENDANT ENTITY	COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED	EXEMPLARY DAMAGE ASSESSED BY JURY	DAMAGE ASSESSED BY SUPREME COURT
Gibson v. Western Fire Insurance Co. (1984)	Western Fire Ins. Co.	$250,000	$300,000	Affirmed-$300,000
Eliason v. Wallace (1984)	Individual	$4,346.52 total combined	$500	Affirmed-$500
Doll v. Major Muffler and Colonial Leasing Co. of New England, Inc., a Massachusetts Corp., d/b/a Colonial Pacific Leasing Co. (1984)	Muffler Co. Leasing Co.	$30,000 $10,000	$90,000 $40,000	Affirmed-$90,000 Vacated-other award
Purcell and Gary v. Automatic Gas Distributors, Inc.(1983)	Gas Distributors	$13,198	$50,000 each Plaintiff	Affirmed-$100,000
Kuiper v. The Goodyear Tire & Rubber Co., et al. (1984)	Tire Co.	$325,000	$1,500,000	Remanded $0 New Trial
Derenburger v. Lutey (1983)	Industrial	$100,000	$10,000	Reversed $0
Gates v. Life of MT Insurance Co. (1983)	Insurance Company	$1,891	$50,000	Reinstated $50,000 from N.O.V.
Lemley v. Allen (1983	Industrial/ Business	$0	$500	Reversed $0
Harris v. American General Life Ins. Company of Delaware (1983)	Insurance		$30,000	Affirmed-$30,000
Lipinski v. The Title Insurance Company and Flathead County Title Company (1983)	Insurance	$25,000	$15,000	Remanded $0
Johnson v. Murray (1982)	Individual	$100,000	$100,000 (by Default)	Affirmed-$100,000

SENATE JUDICIARY
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CASE	DEFENDANT ENTITY	COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLAR DAMAGE ASSESSED BY SUPREME COURT
Miller v. Watkins (1982)	Public Stable Owners	(no jury) $1,500 (Plf.) $78,000 (Def.)	$50,000 (Def.)	Affirmed-$50,000
Bolz v. Myers (1982)	Individual	$25,802.50	$5,000	Affirmed $5,000
Allers v. Willis (1982)	Individual	$128,000	$15,000	Affirmed $15,000
Weber v. Blue Cross of MT (1982)	Health Care Provider	$157,137	$999,999	Reversed & Remanded (-0-)
Darvial v. T & W Chevrolet (1982)	Car Dealer	$2,678	$750	Affirmed $750
Dvorak v. Hutley Project Irrigation District, Propp & Maynard (1981)	Irrigation District	$5,000	$40,000 (punitive damages struck in post-trial Order)	Reversed & Remanded New Trial
Shahrokhfar v. State Farm Mutual Auto. Ins. Co. (1981)	Insurance Co.	$850	$80,000	Affirmed $80,000
Dahl v. Petroleum Geophysical Co. (1981)	Oil Well Drilling Co.	$14,850	$8,500	Affirmed $8,500
Lauman v. Lee (1981)	Individual	-0-	$17,500	Affirmed $17,500
Flemer v. Ming (1980)	Individual & Corporation	$13,127 Estimated	$20,000 Approx.	Affirmed Est. $20,0
Magnunson v. Billmater (1980)	Individual	$1,644	$11,500 (to Ronald Magnuson)	Affirmed $11,500
Toeckes v. Baker (1980)	Individual	$230	$1,000	Affirmed $1,000
First Security Bank of Bozeman v. Goddard v. Bankers Union Life Ins. Co. (1979)	Life Ins. Co.	$4,227.95	$5,000	Affirmed $5,000
Butcher v. Petranek (1979)	Individual	$925	$20,000	Affirmed $20,000

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-12-87
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CASE	DEFENDANT ENTITY	COMPENSATORY & CONTRACT DAMAGES, ATTY'S FEES AWARDED	AMOUNT OF EXEMPLARY DAMAGE ASSESSED BY JURY	AMOUNT OF EXEMPLAR DAMAGE ASSESSED BY SUPREME COURT
Bermes v. Sylling (1978)	Individual	$130,463.62	$5,000	Affirmed $5,000
Miller v. Fox (1977)	Individual	No value specified	$400	Affired $400
Purington v. Sound West (1977)	Music Co.	$4,350	$1,500	Remanded $0
Johnson, et al. v. Doran, et al. (1975)	Real Estate Broker	$16,772	$43,500	Affirmed $43,500
Holland v. Briggs, et. al. (1975)	Individuals	$600	$7,000	Vacated & Remanded $0
Sheehan v. Dewitt (1969)	Individual	$1,000	$5,000	Affirmed $5,000
Hurley v. Northern Pacific Railway Co. (1969)	Railroad	$6,640	$3,000	Affirmed $3,000
McCusker v. Roberts, Gallatin Lumber Co., Western General Enterprises & Chauner (1969)	Builder, Lumber Co. & its manager	$2,500	$7,500	Affirmed $7,500
Gagnier v. The Curran Construction Co. (1968)	Construction Co. & Individual	$10,661	$25,000	Reversed $0
Dutton, et al. v. Rocky Mountain Phosphates (1968)	Phosphate Plant	$113,283.80	$10,000	Affirmed $10,000
Security State Bank of Harlen v. Kittleson (1967)	Bank	$144	$5,000	Affirmed $5,000
Ryan v. Ald, Inc. (1965)	Corporation	$3,415	$7,500	Reversed & Remanded $0
		TOTAL ASSESSMENTS FOR TWENTY-TWO YEARS		$4,360,057

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-12-87
BILL NO. H.B. 442

NAME: N. E. Usbaug DATE: 3-12-87

ADDRESS: Great Falls

PHONE: 727-6222

REPRESENTING WHOM? Pacific Hide + Fur Depot

APPEARING ON WHICH PROPOSAL: HB 442

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-12-87
BILL NO. H.B. 442

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 24, 1987

The fifty-first meeting of the Senate Judiciary Committee was called to order at 7:00 p.m. on March 24, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

ROLL CALL: All members were present.

ACTION ON HB 442: Valencia Lane explained the amendments that the committee asked her to prepare (see Exhibit 1). She stated amendments 2 through 7 discussed who will make the judgement and the amount entitled to the claimant. She commented the jury will return the verdict and the amount, which the judge is given to review and either accept or not accept. The judge must give his reasons for his decision on the claim amount, she said. Senator Mazurek commented there was a proposed amendment that allowed punitive damages to be put in front of the jury. Senator Pinsoneault agreed that the jury makes the decision on the determining amount, the judge reviews it. Senator Mazurek asked why on page 5, line 22, the amendments have the judge making the decision on punitive damage. Valencia explained on line 25, page 5, it refers to judge trials and the list of factors starts on page 3, line 1. Senator Brown asked isn't it the jury who gives the verdict in criminal cases and the judge gives the sentencing. He felt that system should be used here and have the judge give an amount of the claim and not the jury. Senator Pinsoneault said a judge does give a criminal sentencing, but with what the committee has done by making him just decide on whether the jury's amount is proper has taken some of the burden off his shoulders. Senator Mazurek asked the committee if they wanted every punitive damage award based on this criteria. Senator Mazurek explained there are two areas the committee must decide on: 1) who decides the amount, and 2) should there be punitive damage insurance. Senator Brown commented that he agreed with Representative Mercer that a punitive damage law suit should get at the person it is directed toward and not an insurance company, but it is hard to exclude it from all the other coverages. Valencia stated amendments 1, 8, and 9 strike the language prohibiting insurance coverage of punitive damages. Mr. Jim Robischon said if the committee strikes punitive damages, then his Liability Coalition would propose to allow insurance for punitive damages in some cases. He stated it would have to be an "express rider" clause, so it would not effect each policy. Senator Crippen moved amendments 1, 8, and 9 striking the provision against insurance coverage of punitivie damages. The motion carried.

Senator Crippen moved Jim Robischon's amendment (see Exhibit 2) for discussion. The committee asked why the bill needed this amendment, which allowed punitive damage insurance to continue in policies that

included it already, because it is protected in the law. Senator Crippen said the committee was talking about a Supreme Court case on this subject. Senator Mazurek said he was worried about the retroactive effectiveness since it is slated for October and the committee just deleted the insurance part. He asked what the effect of this amendment would be on policies which people thought punitive damages were covered. Valencia answered that on page 7, line 20 the language should be re-inserted because it will make it clear the effective date for the act without upsetting any insurance policy already in place. Senator Crippen added on to his motion on page 7, line 20, to re-insert: "AND policies of insurance issued". Senator Yellowtail felt the insurance companies already have the right to do this if they want and he didn't see why the bill needed it. Senator Mazurek inquired if he renewed an issue, would it still be an issue two years down the road. Valencia pointed out most bills related to insurance have effective dates referring to policies issued or renewed. Senator Mazurek asked if the amendment was adopted, would it apply after October 31, 1987. Jacqueline Terrell, American Insurance Association, said if the policy included the punitive damages, it would bring us into line with other coverages in other areas. They voted on the Robischon's amendment. The motion failed with Senators Yellowtail, Brown, Bishop, Pinsoneault, Halligan, and Blaylock voting no.

Valencia noted on page 2 of her prepared amendments that (9) is taken from the original statute on page four of the bill starting on line 19. She said the phrase on line 22, page four, after "rules":

", outside the presence of the jury,"

was left cut of the amendments. Senator Halligan moved Valencia's 2 through 7 amendments, plus the additional wording found on line 22, page 4. He said this allows the judge to approve or disapprove the jury's decision. He said the judge has to tell the defendant the reasons for decreasing or increasing the claim the jury decided upon. Senator Galt asked what happens if the judge doesn't change it. Senator Bishop explained a judge can increase a jury award under existing law. Mr. Robischon said that was correct. Senator Bishop thought this will give the judge a new power. Mr. John Hoyt suggested it would give the court a very careful review. Senator Brown stated with or without the jury, the judge has always justified the decision anyway. Senator Bishop felt it would not be difficult to present an opinion on the amount if the judge has been there through the whole trial. Senator Beck felt it should be left the way it was presented to the committee. The motion to accept amendments 2 through 7, and the additional language passed with Senators Brown, Galt and Beck voting no.

Senator Halligan pointed out page 2, lines 9 through 14, totally eliminate product liability. Senator Halligan moved to delete page 2, lines 9

through 14, because it would allow punitive damages in bad faith cases, but it can't be in breach of contract cases. Senator Brown asked why this should be done. Senator Halligan expressed that was the way contracts were to be handled in this area. The motion carried with Senators Galt, Beck, Pinsoneault and Mazurek voting no.

Senator Halligan moved that on page 2, line 24 to re-insert "oppression". Senator Crippen felt the "oppression" motion was over-stepping it. Senator Halligan added to his motion the definition of oppression on page 4, lines 25, through page 5, line 4. Mr. Robischon said it could allow any person with any action taken against them to sue for punitive damages. Karl Englund told this definition was a Jack Ramirez and Tom Towe creation. The motion failed with only Senator Halligan voting yes.

Senator Pinsoneault moved the bill AS AMENDED BE CONCURRED IN. The motion carried with Senator Yellowtail and Senator Galt voting no.

ACTION ON HB 167: Mr. Robischon presented what the bill does in its present state. He explained the amendments, by the House, dealt with the prohibition against recovery for emotional or mental distress which applies only in cases arising from contract disputes, except in cases of actual physical injury to the plaintiff. He said, for example, in a recent case in Butte, the plaintiffs, who owned a Baskin Robbins franchise, sued Baskin Robbins for damages allegedly caused by Baskin Robbins' refusal to allow the franchise to be relocated to an allegedly more advantageous location in Butte. He said, the plaintiffs recovered not only for contractual damages but also a large sum for emotional distress. He said this bill, as amended, would have prevented the recovery for any emotional distress. Mr. Robischon went over his amendments, which he gave to the committee on March 12th (see Exhibit 3). He explained the new section 1 gives specific areas where no one can receive damages for emotional or mental distress (a through d). Karl Englund said the introduced bill would have emotional distress and mental distress cases in all contract problems. Mr. Englund pointed out the case Mr. Robischon brought in on March 12 about the 1,000 page transcript and a 1 page section on the mental distress involved, which the plaintiff received over 3 million for emotional distress. He felt there should be more proof to emotional distress than what was in that transcript. He explained his March 12 amendment (see Exhibit 4) that allows emotional and mental distress damages if the contract or the breach of contract would particularly cause distress. Jacqueline Terrell stated her group approves of the Robischon amendments because some damages are not associated with contract actions. Mr. Robischon opposed the Englund amendment. Senator Mazurek thought it was too broad. Randy Gray, Farmers Union Insurance, felt the Englund amendment puts it right back where they started. Senator Crippen asked Mr. Robischon if it would expand the bill by including contract cases and bad faith cases. Mr. Robischon answered it just shows more duties and obligations to this statute. He did feel what he had identified

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 24
7:00 pm.

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

EXHIBIT NO. 1
DATE March 24 1987
BILL NO. HB 442 7:00pm.

PROPOSED AMENDMENTS TO HOUSE BILL 442
(Third reading, blue copy)

1. Title, lines 7 and 8.
Following: "CASES;" on line 7
Strike: the remainder of line 7 through "DAMAGES;" on line 8

2. Page 5, line 18.
Following: "(a)"
Strike: "If"
Insert: "When"
Following: "the"
Strike: "trier of fact"
Insert: "jury"

3. Page 5, line 20.
Following: "the"
Strike: "judge"
Insert: "jury"

4. Page 5, line 21.
Following: line 20
Strike: line 21 through "time"
Insert: "be submitted to the judge for review as provided in subsection (8)(c)"

5. Page 5, line 22.
Following: "made"
Insert: "by the judge"

6. Page 5, lines 22 and 23.
Following: "," on line 22
Strike: the remainder of line 22 through "judge" on line 23
Insert: "he"

7. Page 6, lines 17 through 24.
Following: line 16
Strike: subsection (9) in its entirety
Insert: "(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (8)(b). If, after review, the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (8)(b).

(9) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules that the plaintiff has presented a prima facie claim for exemplary or punitive damages."

8. Page 6, line 25 through page 7, line 8.
Strike: sections 3 and 4 in their entirety
Renumber: subsequent sections

9. Page 7, line 20.
Following: "ARISING"
Strike: "AND policies of insurance issued"

7077b/C:JEANNE\WP:jj

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-24-
BILL NO H.B 4

HOUSE BILL NO. 442

INTRODUCED BY MERCER, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE DAMAGES IN CONTRACT-RELATED CASES; ~~PROHIBITING INSURANCE COVERAGE OF PUNITIVE DAMAGES;~~ AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. ~~Purpose------factual--basis-for-punitive-or exemplary-damages~~ Punitive damages -- when allowed. ~~The purpose--of--27-1-221--is--to--deter--claims-for-punitive-or exemplary-damages-that-are-not-clearly-based-in-fact;--and-to that-end;-the-legislature-intends-for-27-1-221-to-be-used-in combination-with-early-and-ready-application-and-granting-of motions-for-summary-judgment-pursuant--to--Rule--56--of--the Montana--Rules--of-Civil-Procedure-where-such-claims-are-not based-in-fact;-and-the-application-of-the-sanctions-provided for-in-Rule-11-of--the--Montana--Rules--of--Civil--Procedure against--those--parties--responsible-for-making-such-claims;~~

(1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (A) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

~~(a)~~(I) contract;

~~(b)~~(II) breach of contract;

~~(c)~~(III) breach of any express or implied covenant included within or arising out of a contract; or

~~(d)~~(IV) ~~a--tort-that-is-interrelated-with-and-dependent upon-a-claim-for-breach-of-contract~~ TORTIOUS VIOLATION OF ANY EXPRESS OR IMPLIED COVENANT INCLUDED WITHIN OR ARISING OUT OF A CONTRACT.

(B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION ARISING UNDER 33-18-201."

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. ~~When-exemplary~~ Punitive damages allowed -- liability -- proof -- award. (1) Subject to subsection (2), ~~in-any-action-for-a-breach-of-an-obligation-not-arising-from contract~~ and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of oppression, actual fraud, or actual malice, ~~actual-or presumed,-the-jury,-in-addition-to-the-actual--damages,--may~~

Montana Legislative Council

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-24-87
BILL NO. H.B. 442

HB 442

EXHIBIT NO. 2
DATE March 24, 1987
BILL NO. HB 443 7:00 pm.

Page 6, line 25

Following: Section 3

Strike line 25 through page 7, line 4

Insert: "Insurance coverage does not extend to punitive or exemplary damages unless the insurance contract specifically includes such coverage."

intentionally causes cruel and unjust hardship by:

(a) misuse or abuse of authority or power; or

(b) taking advantage of some weakness, disability, or misfortune of another person.

~~(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.~~

~~(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than $25,000 or 1% of the defendant's net worth, whichever is greater.~~

~~(7) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in subsection (6)(b).~~

(6)(7) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

~~(7)~~(8) (a) ~~If~~ When the ~~trier of fact~~ jury returns a verdict or finding of liability for punitive damages, the amount thereof must be determined exclusively by the ~~jury~~ and be submitted to the judge for review as provided in ~~judgment entered within a reasonable time.~~ subsection (8)(c)

(b) When an award of punitive damages is made by the ~~judge~~, he shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances which may operate to INCREASE OR reduce, without wholly defeating, punitive damages.

~~(8)~~(9) Evidence regarding the defendant's financial affairs, financial condition, and net worth may not be admissible in a trial to determine whether a defendant is liable for punitive damages, except that evidence of the defendant's net worth must be considered by the judge in determining the amount of punitive damages to be awarded in those cases where liability for such an award has been ~~established.~~

~~NEW SECTION. Section 3. Insurance coverage of~~

(c) The judge shall review a jury award. ---

(9) The plaintiff may not present ---

SENATE JUDICIARY

STANDING COMMITTEE REPORT

SENATE

March 26 19 87

MR PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 442

Third reading copy (blue color)

Limit Puntive damages.
Mercer (Halligan)

Respectfully report as follows: That HOUSE BILL No. 442

1. Title, lines 7 and 8.
Following: "CASES;" on line 7
Strike: the remainder of line 7 through "DAMAGES;" on line 8

2. Page 2, line 7.
Following: ";"
Insert: "or"

3. Page 2, line 8.
Following: "contract"
Strike: ";"
Insert: "."

4. Page 2, lines 9 through 14.
Strike: subsections (III) and (IV) in their entirety

5. Page 5, line 18.
Following: "(a)"
Strike: "If"
Insert: "When"
Following: "the"
Strike: "trier of fact"
Insert: "jury"

~~DO PASS~~
~~DO NOT PASS~~ CONTINUED

Senator Mazurek

3-26-87 4:05 pm
Chairman

6. Page 5, line 20.
Following: "the"
Strike: "judge"
Insert: "jury"

7. Page 5, line 21.
Following: line 20
Strike: line 21 through "time"
Insert: "be submitted to the judge for review as provided in subsection (8)(c)"

8. Page 5, line 22.
Following: "made"
Insert: "by the judge"

9. Page 5, lines 22 and 23.
Following: "," on line 22
Strike: the remainder of line 22 through "judge" on line 23
Insert: "he"

10. Page 6, lines 17 through 24.
Following: line 16
Strike: subsection (9) in its entirety
Insert: "(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (8)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (8)(b).

(9) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages."

11. Page 6, line 25 through page 7, line 8.
Strike: sections 3 and 4 in their entirety
Renumber: subsequent sections

CONTINUED

Senator Mazurek

3-26-87 4:05 pm

12. Page 7, line 20.
Following: "ARISING"
Strike: "AND policies of insurance issued"

Amendments, HB 442
7077b/C:JEANNE\WP:jj

KMC AND AS AMENDED
BE CONCURRED IN

3-26

Senator Mazurek

HOUSE BILL NO. 442

INTRODUCED BY MERCER, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE DAMAGES IN CONTRACT-RELATED CASES; ~~PROHIBITING INSURANCE COVERAGE OF PUNITIVE DAMAGES;~~ AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES ~~AND AN IMMEDIATE EFFECTIVE DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. ~~Purpose------factual basis for punitive or exemplary damages~~ Punitive damages -- when allowed. ~~The purpose of 27-1-221 is to deter claims for punitive or exemplary damages that are not clearly based in fact, and to that end, the legislature intends for 27-1-221 to be used in combination with early and ready application and granting of motions for summary judgment pursuant to Rule 56 of the Montana Rules of Civil Procedure where such claims are not based in fact, and the application of the sanctions provided for in Rule 11 of the Montana Rules of Civil Procedure against those parties responsible for making such claims.~~ (1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (A) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

~~(a)~~(I) contract; OR

~~(b)~~(II) breach of contract~~,~~.

~~(c) (III) breach of any express or implied covenant included within or arising out of a contract; or~~

~~(d) (IV) a tort that is interrelated with and dependent upon a claim for breach of contract. PUNITIVE DAMAGES MAY NOT BE AWARDED IN ANY EXPRESS OR IMPLIED COVENANT INCLUDED WITHIN OR ARISING OUT OF A CONTRACT.~~

(B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION ARISING UNDER 33-18-201."

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. ~~When exemplary~~ Punitive damages ~~allowed~~ -- liability -- proof -- award. (1) Subject to subsection (2)~~,~~ ~~in any action for a breach of an obligation not arising from~~ contract and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of ~~oppression~~, actual fraud, or actual malice~~, actual or presumed, the jury, in addition to the actual damages, may~~

Montana Legislative Council

REFERENCE BILL

~~give damages for the sake of example and by way of punishing the defendant.~~

(2) A defendant is guilty of actual malice if he:

(A) knowingly caused injury to the plaintiff~~.~~; OR

(B) HAS KNOWLEDGE OF FACTS OR INTENTIONALLY DISREGARDS FACTS THAT CREATE A HIGH PROBABILITY OF INJURY TO THE PLAINTIFF AND:

(I) DELIBERATELY PROCEEDS TO ACT IN CONSCIOUS OR INTENTIONAL DISREGARD OF THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF; OR

(II) DELIBERATELY PROCEEDS TO ACT WITH INDIFFERENCE TO THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF.

(3) FOR PURPOSES OF SUBSECTION (2)(A), A PERSON ACTS KNOWINGLY IF HE IS AWARE THAT IT IS HIGHLY PROBABLE THAT INJURY WILL BE CAUSED BY HIS CONDUCT.

~~(3)~~(4) A defendant is guilty of actual fraud if he:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

~~(4)~~(5) Actual fraud exists only where the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of such reliance. The contract definitions of fraud expressed in Title 28, chapter

2, do not apply to proof of actual fraud under this section.

~~(2)~~(6) ~~The jury may not award exemplary or punitive damages unless the plaintiff has proved all~~ All elements of the claim for exemplary or punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt.

~~(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, knowledge of which may be proven by direct or circumstantial evidence, which creates a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk or recklessly proceeds in unreasonable disregard of or indifference to that risk.~~

~~(4) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages.~~

~~(5) A defendant is guilty of oppression if he~~

~~intentionally causes cruel and unjust hardship by:~~

~~(a) misuse or abuse of authority or power; or~~

~~(b) taking advantage of some weakness, disability, or misfortune of another person.~~

~~(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.~~

~~(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than $25,000 or 1% of the defendant's net worth, whichever is greater.~~

~~(7) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in subsection (6)(b).~~

~~(6)~~(7) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

~~(7)~~(8) (a) ~~If~~ WHEN the ~~trier of fact~~ JURY returns a verdict or finding of liability for punitive damages, the amount thereof must be determined exclusively by the ~~judge~~ JURY and ~~judgment entered within a reasonable time~~ BE SUBMITTED TO THE JUDGE FOR REVIEW AS PROVIDED IN SUBSECTION (8)(C).

(b) When an award of punitive damages is made BY THE JUDGE, ~~the judge~~ HE shall clearly state his reasons for

making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances which may operate to INCREASE OR reduce, without wholly defeating, punitive damages.

~~(8)~~(9) Evidence regarding the defendant's financial affairs, financial condition, and net worth may not be admissible in a trial to determine whether a defendant is liable for punitive damages, except that evidence of the defendant's net worth must be considered by the judge in determining the amount of punitive damages to be awarded in

those cases where liability for such an award has been determined.

(C) THE JUDGE SHALL REVIEW A JURY AWARD OF PUNITIVE DAMAGES, GIVING CONSIDERATION TO EACH OF THE MATTERS LISTED IN SUBSECTION (8)(B). IF AFTER REVIEW THE JUDGE DETERMINES THAT THE JURY AWARD OF PUNITIVE DAMAGES SHOULD BE INCREASED OR DECREASED, HE MAY DO SO. THE JUDGE SHALL CLEARLY STATE HIS REASONS FOR INCREASING OR DECREASING THE PUNITIVE DAMAGES AWARD OF THE JURY IN FINDINGS OF FACT AND CONCLUSIONS OF LAW, DEMONSTRATING CONSIDERATION OF EACH OF THE FACTORS LISTED IN SUBSECTION (8)(B).

(9) THE PLAINTIFF MAY NOT PRESENT, WITH RESPECT TO THE ISSUE OF EXEMPLARY OR PUNITIVE DAMAGES, ANY EVIDENCE TO THE JURY REGARDING THE DEFENDANT'S FINANCIAL AFFAIRS OR NET WORTH UNLESS THE JUDGE FIRST RULES, OUTSIDE THE PRESENCE OF THE JURY, THAT THE PLAINTIFF HAS PRESENTED A PRIMA FACIE CLAIM FOR EXEMPLARY OR PUNITIVE DAMAGES."

NEW SECTION. --Section 3. --Insurance ----- coverage ----- of punitive damages void. --It is a violation of --public --policy to --insure --against --an --award --of punitive damages, and any insurance policy provision which purports to insure --against any loss from liability for punitive damages is void.

NEW SECTION. --Section 4. --Codification ----- instruction. Section 3 is intended to be codified as an integral part --of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to section 3.

NEW SECTION. Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Applicability. (1) Except as provided in subsection (2), this act applies to any proceeding in which trial is commenced after the effective date of this act.

(2) Section 3 applies to THIS ACT APPLIES TO CLAIMS ARISING AND policies of insurance issued after the effective date of this act, EXCEPT THAT SUBSECTIONS (7), (8), AND (9) OF 27-1-221 APPLY TO TRIALS THAT BEGIN AFTER THE EFFECTIVE DATE OF THIS ACT WHETHER OR NOT THE CLAIM AROSE AFTER THE EFFECTIVE DATE OF THIS ACT.

NEW SECTION. --Section 7. --Effective --date. --This act is effective on passage and approval.

-End-

Pg. 1 of 3 **CONFERENCE COMMITTEE REPORT** Report No. One

4-16 19 87

MR. SPEAKER

We, your FREE Conference Committee on

House Bill 442

met and considered House Bill 442 in its entirety

We recommend as follows: That House Bill 442, reference copy (salmon) be amended as follows:

1. Title, line 8.
Following: "~~DAMAGES;~~"
Insert: "PERMITTING INSURANCE COVERAGE OF PUNITIVE DAMAGES;"

2. Page 3, lines 3 through 5.
Following: "he" on line 3
Strike: remainder of line 3 through "(B)" on line 5

3. Page 3, line 8.
Strike: "(I)"
Insert: "(a)"

4. Page 3, line 11.
Strike: "(II)"
Insert: "(b)"

5. Page 3, lines 13 through 15.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

CONTINUED

And that this Conference Committee report be adopted.

FOR THE SENATE

Sen. Halligan, Chairman

Sen. Crippen

Sen. Galt

FOR THE HOUSE

Rep. Mercer

Rep. Euddily

Rep. Addy

ADOPT REJECT

6. Page 5, line 18.
Following: "~~If~~"
Insert: "Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages."

7. Page 5, line 19.
Following: "verdict"
Strike: "or"
Following: "finding"
Strike: "of liability"
Insert: "a defendant liable"

8. Page 5, line 20.
Following: "amount"
Strike: "thereof"
Insert: "of punitive damages"
Following: "must"
Insert: "then"
Following: "determined"
Strike: "exclusively"

9. Page 5, line 21.
Following: "JURY"
Insert: "in an immediate, separate proceeding"

10. Page 5, line 23.
Strike: "(8)(C)."
Insert: "(7) (c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered."

11. Page 7, line 5.
Strike: "(8) (B)"
Insert: "(7) (b)"

12. Page 7, line 8.
Following: "INCREASING"
Strike: "OR"
Insert: ","
Following: "DECREASING"
Insert: ", or not increasing or decreasing"

13. Page 7, line 11.
Strike: "(8) (B)"
Insert: "(7) (b)"

CONTINUED

14. Page 7, lines 12 through 17.
Strike: subsection (9) in its entirety
Insert: "(8) Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

15. Page 7, line 23.
Following: line 22
Insert: "NEW SECTION. Section 3. Insurance coverage of punitive damages. (1) Insurance coverage does not extend to punitive or exemplary damages unless expressly included by the contract of insurance.

(2) Prior to renewal of any policy in effect on [the effective date of this act], the insurer shall provide the insured with notice of nonrenewal of coverage of punitive or exemplary damages in the same manner as required by the commissioner of insurance for the renewal of policies with altered terms."
Renumber: subsequent sections

16. Page 8, line 14.
Strike: "(7), (8), AND (9)"
Insert: "(6), (7), and (8)"

HOUSE BILL NO. 442

INTRODUCED BY MERCER, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE DAMAGES IN CONTRACT-RELATED CASES; ~~PROHIBITING--INSURANCE COVERAGE--OF-PUNITIVE-DAMAGES;~~ PERMITTING INSURANCE COVERAGE OF PUNITIVE DAMAGES; AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES ~~AND-AN IMMEDIATE-EFFECTIVE-DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. ~~Purpose------factual--basis-for-punitive-or exemplary-damages~~ Punitive damages -- when allowed. ~~The purpose--of--27-1-221--is--to--deter--claims-for-punitive-or exemplary-damages-that-are-not-clearly-based-in-fact,-and-to that-end,-the-legislature-intends-for-27-1-221-to-be-used-in combination-with-early-and-ready-application-and-granting-of motions-for-summary-judgment-pursuant--to--Rule--56--of--the Montana--Rules--of-Civil-Procedure-where-such-claims-are-not based-in-fact,-and-the-application-of-the-sanctions-provided for-in-Rule-11-of--the--Montana--Rules--of--Civil--Procedure against--those--parties--responsible-for-making-such-claims.~~

(1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (A) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

~~(a)~~(I) contract; OR

~~(b)~~(II) breach of contract~~,~~.

~~(c)(III) breach of any express or implied covenant included within or arising out of a contract; or~~

~~(d)(IV) a tort that is interrelated with and dependent upon a claim for breach of contract. PORTIONS--VIOLATION--OF ANY--EXPRESS--OR-IMPLIED-COVENANT-INCLUDED-WITHIN-OR-ARISING OUT-OF-A-CONTRACT.~~

(B) SUBSECTION (2)(A) DOES NOT PROHIBIT RECOVERY OF PUNITIVE DAMAGES IN A PRODUCTS LIABILITY ACTION OR AN ACTION ARISING UNDER 33-18-201."

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. ~~When-exemplary~~ Punitive damages ~~allowed~~ -- liability -- proof -- award. (1) Subject to subsection (2)~~,~~ ~~in-any-action-for-a-breach-of-an-obligation-not-arising-from~~ contract and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of ~~oppression,~~ actual fraud, or actual malice~~,-actual-or~~

presumed,--the-jury,-in-addition-to-the-actual--damages,--may give-damages-for-the-sake-of-example-and-by-way-of-punishing the-defendant.

(2) A defendant is guilty of actual malice if he:

~~(A)--knowingly-caused-injury-to-the-plaintiff;--OR~~

~~(B)~~ HAS KNOWLEDGE OF FACTS OR INTENTIONALLY DISREGARDS FACTS THAT CREATE A HIGH PROBABILITY OF INJURY TO THE PLAINTIFF AND:

~~(i)~~(A) DELIBERATELY PROCEEDS TO ACT IN CONSCIOUS OR INTENTIONAL DISREGARD OF THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF; OR

~~(ii)~~(B) DELIBERATELY PROCEEDS TO ACT WITH INDIFFERENCE TO THE HIGH PROBABILITY OF INJURY TO THE PLAINTIFF.

~~(3)--FOR-PURPOSES-OF-SUBSECTION-(2)(A),-A--PERSON--ACTS KNOWINGLY--IF--HE--IS--AWARE-THAT-IT-IS-HIGHLY-PROBABLE-THAT INJURY-WILL-BE-CAUSED-BY-HIS-CONDUCT.~~

~~(3)~~(4)(3) A defendant is guilty of actual fraud if he:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

~~(4)~~(5)(4) Actual fraud exists only where the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of such reliance. The

contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

~~(2)~~(5)~~(6)~~(5) The--jury--may--not--award--exemplary--or punitive--damages--unless--the--plaintiff-has-proved-all All elements of the claim for exemplary-or punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt.

~~(3)--Presumed-malice-exists-when-a-person-has-knowledge of--facts,--intentionally--avoids--learning--of--facts,---or recklessly--disregards--facts,--knowledge--of--which--may-be proven-by-direct-or-circumstantial-evidence,-which-creates-a high-degree-of-risk-of-harm-to-the-substantial-interests--of another,---and---either--deliberately--proceeds--to--act--in conscious-disregard-of--or--indifference--to--that--risk--or recklessly---proceeds---in---unreasonable--disregard--of--or indifference-to-that-risk.~~

~~(4)--The-plaintiff-may-not-present,-with-respect-to-the issue-of-exemplary-or-punitive-damages,-any-evidence-to--the jury--regarding--the--defendant's--financial--affairs-or-net worth-unless-the-judge-first-rules,-outside-the-presence--of the--jury,--that--the--plaintiff-has-presented-a-prima-facie

claim for exemplary or punitive damages.

(5) A defendant is guilty of oppression if he intentionally causes cruel and unjust hardship by:

(a) misuse or abuse of authority or power; or

(b) taking advantage of some weakness, disability, or misfortune of another person.

(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.

(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than $25,000 or 1% of the defendant's net worth, whichever is greater.

(7) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in subsection (6)(b).

(6)(7)(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

(7)(8)(7) (a) If EVIDENCE REGARDING A DEFENDANT'S FINANCIAL AFFAIRS, FINANCIAL CONDITION, AND NET WORTH IS NOT ADMISSIBLE IN A TRIAL TO DETERMINE WHETHER A DEFENDANT IS LIABLE FOR PUNITIVE DAMAGES. WHEN the trier of fact JURY returns a verdict or finding of liability A DEFENDANT LIABLE for punitive damages, the amount thereof OF PUNITIVE DAMAGES

must THEN be determined exclusively by the judge JURY IN AN IMMEDIATE, SEPARATE PROCEEDING and judgment entered within a reasonable time BE SUBMITTED TO THE JUDGE FOR REVIEW AS PROVIDED IN SUBSECTION (8)(6) (7)(C). IN THE SEPARATE PROCEEDING TO DETERMINE THE AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED, THE DEFENDANT'S FINANCIAL AFFAIRS, FINANCIAL CONDITION, AND NET WORTH MUST BE CONSIDERED.

(b) When an award of punitive damages is made BY THE JUDGE, the judge HE shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances which may operate to INCREASE OR reduce, without wholly defeating, punitive damages.

~~(8)(9)--Evidence-regarding--the--defendant's--financial affairs,--financial--condition,--and--net--worth--may-not-be admissible-in-a-trial-to-determine-whether--a--defendant--is liable--for--punitive--damages,--except-that-evidence-of-the defendant's-net-worth-must-be-considered--by--the--judge--in determining--the-amount-of-punitive-damages-to-be-awarded-in these-cases-where-liability--for--such--an--award--has--been determined.~~

(C) THE JUDGE SHALL REVIEW A JURY AWARD OF PUNITIVE DAMAGES, GIVING CONSIDERATION TO EACH OF THE MATTERS LISTED IN SUBSECTION ~~(9)(B)~~ (7)(B). IF AFTER REVIEW THE JUDGE DETERMINES THAT THE JURY AWARD OF PUNITIVE DAMAGES SHOULD BE INCREASED OR DECREASED, HE MAY DO SO. THE JUDGE SHALL CLEARLY STATE HIS REASONS FOR INCREASING OR, DECREASING, OR NOT INCREASING OR DECREASING THE PUNITIVE DAMAGES AWARD OF THE JURY IN FINDINGS OF FACT AND CONCLUSIONS OF LAW, DEMONSTRATING CONSIDERATION OF EACH OF THE FACTORS LISTED IN SUBSECTION ~~(8)(B)~~ (7)(B).

~~(9)--THE-PLAINTIFF-MAY-NOT-PRESENT,-WITH-RESPECT-TO-THE ISSUE-OF-EXEMPLARY-OR-PUNITIVE-DAMAGES,-ANY-EVIDENCE-TO--THE JURY--REGARDING--THE--DEFENDANT'S--FINANCIAL--AFFAIRS-OR-NET WORTH-UNLESS-THE-JUDGE-FIRST-RULES,-OUTSIDE-THE-PRESENCE--OF THE--JURY,--THAT--THE--PLAINTIFF-HAS-PRESENTED-A-PRIMA-FACIE CLAIM-FOR-EXEMPLARY-OR-PUNITIVE-DAMAGES.~~

(8) NOTHING IN THIS SECTION IS INTENDED TO ALTER THE MONTANA RULES OF CIVIL PROCEDURE GOVERNING DISCOVERY OF A DEFENDANT'S FINANCIAL AFFAIRS, FINANCIAL CONDITION, AND NET WORTH."

~~NEW-SECTION.--Section-3.--Insurance-----coverage-----of punitive-damages-void.--It-is-a-violation-of--public--policy to--insure--against--an--award--of-punitive-damages,-and-any insurance-policy-provision-which-purports-to-insure--against any-loss-from-liability-for-punitive-damages-is-void.~~

NEW SECTION. SECTION 3. INSURANCE COVERAGE OF PUNITIVE DAMAGES. (1) INSURANCE COVERAGE DOES NOT EXTEND TO PUNITIVE OR EXEMPLARY DAMAGES UNLESS EXPRESSLY INCLUDED BY THE CONTRACT OF INSURANCE.

(2) PRIOR TO RENEWAL OF ANY POLICY IN EFFECT ON [THE EFFECTIVE DATE OF THIS ACT], THE INSURER SHALL PROVIDE THE INSURED WITH NOTICE OF NONRENEWAL OF COVERAGE OF PUNITIVE OR EXEMPLARY DAMAGES IN THE SAME MANNER AS REQUIRED BY THE COMMISSIONER OF INSURANCE FOR THE RENEWAL OF POLICIES WITH ALTERED TERMS.

~~NEW-SECTION.--Section-4.--Codification-----instruction.-- Section--3-is-intended-to-be-codified-as-an-integral-part-of Title-28,-chapter-2,-part-7,-and-the-provisions-of-Title-28, chapter-2,-part-7,-apply-to-section-3.~~

NEW SECTION. Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Applicability. ~~(1) Except as provided in subsection (2), this act applies to any proceeding in which trial is commenced after the effective date of this act.~~

~~(2) Section 3 applies to~~ THIS ACT APPLIES TO CLAIMS ARISING AND ~~policies of insurance issued~~ after the effective date of this act, EXCEPT THAT SUBSECTIONS ~~(7), (8), AND (9)~~ (6), (7), AND (8) OF 27-1-221 APPLY TO TRIALS THAT BEGIN AFTER THE EFFECTIVE DATE OF THIS ACT WHETHER OR NOT THE CLAIM AROSE AFTER THE EFFECTIVE DATE OF THIS ACT.

~~NEW SECTION. Section 7. Effective date. This act is effective on passage and approval.~~

-End-